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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No. 46

[redacted] PETITIONER

vs.

[redacted]

ON [redacted] TO THE COURT OF [redacted]

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UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

Case No. 5–C–1887

In the Matter of STOWE SPINNING COMPANY, ACME SPINNING COMPANY, PERFECTION SPINNING COMPANY, LINFORD MILLS, INC. *and* TEXTILE WORKERS UNION OF AMERICA, C. I. O.

Mr. John H. Garver, for the Board.

Mr. P. C. Whitlock, of Charlotte, N. C., for the respondent Stowe Spinning Company.

Mr. George B. Mason, of Gastonia, N. C., for the respondent Acme Spinning Company.

Mr. Hardy B. Gaston, of Belmont, N. C., for the respondent Perfection Spinning Company.

Mr. L. B. Hollowell, of Gastonia, N. C., for the respondent Linford Mills, Inc.

Mr. R. H. Harris, of Durham, N. C., and *Miss Nancy Blaine*, of Charlotte N. C., for the Union.

Miss Frances Lopinsky, of counsel to the Board.

DECISION AND ORDER

STATEMENT OF THE CASE

Upon an amended charge filed on October 1, 1945, by Textile Workers Union of America, C. I. O., herein called the Union, the National Labor Relations Board, herein called the Board, by its Regional Director for the Fifth Region (Baltimore, Maryland), issued its complaint, dated October 3, 1945, against Stowe Spinning Company, Acme Spinning Company, Perfection Spinning Company, and Linford Mills, Inc., herein called the respondents, alleging that the respondent Stowe Spinning Company had engaged in and was engaging in unfair labor practices affecting commerce, within the meaning of Section 8 (1) and (3), and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act, and that all the respondents had engaged in and were engaging in unfair labor practices affecting commerce within the meaning of Section 8 (1) and Section 2 (6) and (7) of the Act. Copies of the complaint and notice of hearing thereon were duly served upon the respondents and the Union.

With respect to the unfair labor practices, the complaint, as amended during the hearing, alleged in substance: (1) that on February 10, 1945, the respondent Stowe Spinning Company discriminatorily discharged John R. Hall and Lillie E. Hall, and on February 24, 1945, discriminatorily discharged George W. Gainey, Mabel Gainey, and Emma Louise Gainey because they joined or assisted the Union; (2) that in January 1945, and thereafter, the respondents denied the use of a building in North Belmont, North Carolina, owned by them, to the employees of the respondent Stowe Spinning Company and to the Union, for the purposes of self-organization; (3) that since November 1944, the respondent Stowe Spinning Company, through its officers and agents, vilified and expressed disapproval of the Union, interrogated its employees as to their union affiliations, and urged and warned its employees not to join or remain members of the Union; and (4) that by these acts the respondents interfered with, restrained, and coerced their employees in the exercise of rights guaranteed in Section 7 of the Act.

In their answers, each of them verified on October 12, 1945, the respondents denied that they engaged in the alleged unfair labor practices. As to the discharges, the answer of the respondent Stowe Spinning Company contains certain affirmative allegations which will be set forth and considered hereinafter.

Pursuant to notice, a hearing was held in Gastonia, North Carolina, on October 15, 16, and 17, 1945, before C. W. Whittemore, the Trial Examiner duly designated by the Chief Trial Examiner. The Board and the respondents were represented by counsel, and the Union, by its representatives. All parties participated in the hearing and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing upon the issues.

During the hearing a motion made by counsel for the Board, without objection, to strike from the complaint certain allegations relating to John R. Hall, was granted.[1] Also during the hearing, a motion of the respondents to dismiss from the complaint allegations relating to the use of the building above referred to was denied. At the close of the hearing, counsel for the respondents moved to dismiss the complaint in its entirety. The Trial Examiner reserved ruling, and denied the motion in his Intermediate Report. A joint motion, by all

[1] The complaint originally alleged that, after his discharge by the respondent Stowe Spinning Company, John R. Hall was discriminatorily refused employment by the respondent Acme Spinning Company. This was the portion stricken.

counsel, was granted to conform the pleadings to the proof as to minor matters. During the course of the hearing and in his Intermediate Report, the Trial Examiner made rulings on other motions and on objections to the admission of evidence. The Board has reviewed the rulings of the Trial Examiner and finds that no prejudicial error was committed. The rulings are hereby affirmed.

On November 13, 1945, the Trial Examiner issued his Intermediate Report, copies of which were duly served upon the respondents and the Union. He found that the respondent Stowe Spinning Company had engaged in and was engaging in unfair practices affecting commerce, within the meaning of Section 8 (1) and (3) and Section 2 (6) and (7) of the Act, and that all the respondents had engaged in and were engaging in unfair labor practices within the meaning of Section 8 (1) and Section 2 (6) and (7) of the Act. He recommended that the respondents cease and desist from the unfair labor practices found and take certain affirmative action designed to effectuate the policies of the Act. Thereafter, on December 14, 1945, the respondents filed exceptions to the Intermediate Report and supporting briefs. Upon consideration of the record, the Board, on its own motion, reopened the record and received by stipulation of the parties evidence concerning the business of two of the respondents. The stipulations are hereby made part of the record.

The Board has considered the Intermediate Report, the respondent's exceptions and briefs, and the entire record in the case, and insofar as the exceptions are inconsistent with the findings, conclusions, and order set forth below, finds them to be without merit, and insofar as the exceptions are consistent therewith, finds them to have merit.

Upon the entire record in the case, the Board makes the following:

Findings of Fact

I. The business of the respondents

The respondents Stowe Spinning Company, Acme Spinning Company, Perfection Spinning Company, and Linford Mills, Inc., sometimes hereinafter referred to as the respondents Stowe, Acme, Perfection, and Linford, respectively, are North Carolina corporations, each of them having its principal office and place of business in Belmont, North Carolina. All are engaged in the manufacture, sale, and distribution of cotton yarn. In the course and conduct of their business each of the respondents causes a substantial amount of materials, consist-

ing principally of raw cotton valued at more than $500,000 annually to be transported in interstate commerce to and through States of the United States, other than North Carolina, to its Belmont plant, and causes a substantial amount of products manufactured at its Belmont plant, consisting principally of cotton yarn, valued at more than $500,000 annually, to be transported in interstate commerce to and through States of the United States, other than the State of North Carolina, from its Belmont plant.

The four respondents concede that they are separately engaged in commerce within the meaning of the Act.

II. THE ORGANIZATION INVOLVED

Textile Workers Union of America, affiliated with the Congress of Industrial Organizations, is a labor organization admitting to membership employees of the respondents.

III. THE UNFAIR LABOR PRACTICES

A. *The setting in which the relevant events occurred*

1. The respondents' plants and mill villages

Each of the four respondents operates a mill in North Belmont, North Carolina, an unincorporated village located about 2½ miles from the town of Belmont. Each of the respondents owns a large number of houses [2] which are rented to employees and which, collectively, are known as "mill villages." The mill villages are policed by a deputy sheriff who is paid by the four respondents. At a point centrally located in relation to the mill villages are: (1) a branch post office, located in a building erected and owned by the four respondents; (2) a theatre, which is owned by the four respondents; and (3) a public school building. The three members of the School Board are J. W. Miller, superintendent of the respondent Perfection; Overseer John Thower of the respondent Acme, and Superintendent John Starnes of the respondent Linford.

2. The interrelationship between the respondents

A. C. Lineberger is president of the respondents Perfection, Acme, and Linford; J. Harold Lineberger is vice president of the respondents Perfection and Linford, and secretary-treasurer of the respondent Acme; D. P. Stowe is vice president of the

[2] Acme has about 158 such houses, Stowe about 100, and Linford and Perfection about 75 each.

respondent Acme and secretary-treasurer of the respondent Perfection. The officers of the respondent Stowe are C. T. Stowe, president; C. P. Stowe, vice president; and R. L. Stowe, secretary-treasurer, all of whom are cousins of D. P. Stowe.

3. The ownership of the P. O. S. of A. Building

As noted heretofore, the four respondents jointly own the building which houses the North Belmont Post Office. The building is known as the P. O. S. of A. Building—the initials denoting the name of a fraternal organization called the Patriotic Order Sons of America, in which employees of each of the respondents are members. Membership dues are deducted from the employees' pay by the respondents and remitted to this organization.

The post office and a grocery store occupy the first floor of the building. On the second floor is a large hall, furnished with chairs supplied by the respondents and used rent-free for meetings of the P. O. S. of A.

D. P. Stowe, identified above as an officer of the respondents Acme and Perfection, acts as the agent of the four respondents in the control and rental of the P. O. S. of A. Building.

4. The self-organization of the respondents' employees

After the general textile strike of 1934, no union organizational activity existed among the employees at any of the North Belmont Mills until late in 1944.

On a Sunday in December 1944, two union representatives met with three employees of the respondent Stowe at the home of one of the latter group. One of the employees present, George W. Gainey, whose discharge is an issue in this proceeding, thereafter assumed leadership in obtaining signatures to union membership application blanks. For a time Gainey was aided in his union solicitation by another employee of the respondent Stowe, but this employee left the respondent's employment early in February 1945 to join the armed services.

Shortly after the December meeting, Gainey, in company with John R. Hall, another employee of the respondent Stowe, attended a union organization gathering of employees of another mill, a few miles from North Belmont. At this meeting Gainey asked the union organizer to arrange for a mass meeting of Stowe employees at North Belmont.

Hall and his wife joined the Union in mid-January of 1945, and about a week later Hall began actively assisting Gainey in soliciting union membership applications among fellow em-

ployees. The subsequent discharge of Hall and the alleged discharge of his wife are also issues in this proceeding.

B. *The events relevant to the issues in this proceeding*

1. The respondents' refusal to permit use of the P. O. S. of A. Building for self-organization of the employees

(a) *The refusal*

Pursuant to the request of Gainey that the Union arrange a mass meeting of Stowe employees, Robert H. Harris, a national representative of the Union, came to North Belmont to seek a suitable meeting place. Upon being informed that O. R. Stewart, a second hand at the respondent Acme's plant, had charge of the P. O. S. of A. hall, Harris approached Stewart on Monday, January 22, 1945. Stewart informed Harris that Harris would have to see Baxter Black, an employee of the same mill, who was president of the P. O. S. of A. Harris went to Black, identified himself as a representative of the Union, and asked permission to use the P. O. S. of A. hall on the following Sunday afternoon in order that employees of Stowe might complete their union organizing campaign.

Black informed Harris that the Union could have the use of the hall, and requested in payment therefor the sum of $1.00 as a janitor's fee. Harris promised to pay more for the use of the hall, the exact amount to be paid over and above the janitor's fee being left to Harris. In making arrangements for the use of the hall with Black, Harris stressed the fact that he must have a definite commitment that the hall would be available because leaflets announcing the meeting place must be prepared and distributed. Harris was assured by Black that his word was final, Black explaining that he was head of the "lodge."[3] Harris thereupon proceeded to have leaflets mimeographed.

On the next day Second Hand Stewart asked Black what he had done about Harris' request. When Black replied that

[3] The findings as to the conversation between Harris and Black is based on the testimony of Harris, which we credit. Black testified that he told Harris, on this occasion, that a meeting of the P. O. S. of A. would have to be held before permission could be granted. We agree with the Trial Examiner that Black's recollection of the interview in this respect was inaccurate. In addition to testimony that he knew of no reason why the employees could not use the hall for organizational purposes, Black also testified that he told Stewart, the day after he had talked to Harris, that he had given Harris authority to use the hall the next Sunday. Furthermore, there is no evidence that any question as to permitting the Union to use the hall was ever submitted to a P. O. S. of A. meeting.

he had given Harris permission to use the hall. Stewart stated: "You shouldn't have done it for he ain't nothing but a Textile organizer." Black thereupon reported his action to Superintendent Cauble of the respondent Acme's mill. Cauble instructed Black to do nothing further until he, Cauble, had seen the "officials" at Belmont. Later on the same day, Cauble told Black that D. P. Stowe, the agent for all the respondents in control of the P. O. S. of A. Building, would communicate with Stewart that evening.[4]

Later on the same day Stewart, who also was an officer of the P. O. S. of A., was summoned to D. P. Stowe's office. Agent Stowe asked Stewart, according to Stewart's testimony, "if we were not overstepping our bounds," told him that the respondents had built the P. O. S. of A. structure for the organization's meetings and "meetings of that type," and demanded to know why permission had been given to Harris. Stewart replied:

* * * Brother Black had told me that he didn't understand what the man was representing and therefore he didn't know him being a union organizer and he had told him he could use the hall at that time * * *

Stowe instructed Stewart to inform Harris that he could not use the hall.[5]

On Friday, after leaflets had been distributed to Stowe employees announcing that the union meeting was to be held at the hall on the following Sunday, January 28, Harris was told by Black that he had received orders, through Stewart, that Stowe had refused to permit the Union to use the hall "under any circumstances."[6]

The employees did not use the hall on January 28, but met in the street outside the building.

Before the street meeting, however, and after Black had transmitted Stowe's refusal to Harris, Harris tried to obtain

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[4] These findings are based upon the uncontradicted testimony of Black, which we credit, as did the Trial Examiner.

[5] The foregoing is based upon the uncontradicted testimony of Stewart which we credit. Stewart also testified that he had been told by Stowe that Harris was to be notified that he could not use the hall "unless he did see Mr. Stowe." However, Stewart's testimony that Stowe's instruction contained such qualification is refuted by Stowe's definite testimony that he refused to permit the use of the hall, and by Black's testimony that, after seeing Stowe, Stewart had told Black that Stowe had refused to permit Harris to use the hall.

[6] Harris so testified without contradiction, and we credit his testimony as did the Trial Examiner. This testimony was corroborated by Black who credibly testified that Black informed Harris that the building would not be available for Harris' use because "the mill officials would not let us do it."

the use of the schoolhouse or the theatre in North Belmont. J. W. Miller, the chairman of the School Board and the superintendent of the respondent Perfection's mill, at first told Harris that a shortage of coal made the use of fire for heating purposes impossible. When Harris said that no fire would be necessary, Miller stated that D. P. Stowe had said that the Union could not use the school building for the meeting. Harris then interviewed the manager of the movie theatre, who stated that he permitted no one to use the theatre building for any purpose.[1]

(b) *Conclusions as to the refusal*

According to D. P. Stowe's uncontradicted testimony, which we credit, the P. O. S. of A. Building was constructed in 1937 for the dual purpose of providing store space for the convenience of employees, and a meeting place for members of the P. O. S. of A., who for some years had been using the school house auditorium. He further testified credibly that the only direct interest of the respondents in the P. O. S. of A. was:

"just the fact that we were trying to help the people out who were members of it and did not have a place to meet in."

He added: "* * * We have always got a special interest in being patriotic."

As to the arrangements under which the P. O. S. of A. was permitted use of this company-owned property, Stowe credibly testified without contradiction that "it was built especially for the Patriotic Sons of America to hold their meetings in and was not to be rented to anybody else." He also testified:

"* * * we told the Patriotic Sons of America that we were going to let them use the building free of rent, but were not going to allow it to be rented for any [other] purposes."

No lease, however, is in effect containing this or any other provision.

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[1] Harris so testified. Miller denied that he had refused Harris the use of the school building, stating that he had no such authority. He further denied that the name of D. P. Stowe was mentioned in his interview with Harris. He admitted, however, having informed Harris that the schoolhouse could not be used because of the coal shortage. We credit Harris, as did the Trial Examiner. Although the complaint contains no allegation as to the refusals to permit the use of the theatre or the public school for a union meeting, the findings are relevant to the question of availability of meeting places, other than the P. O. S. of A. hall, near the respondents' mill villages. Miller's statement to Harris, moreover, is further indication of Stowe's intent, as an officer and agent of the respondents, to interfere with the employees' efforts to self-organize by refusing to permit them the use of a suitable meeting place. It is undisputed that the schoolhouse had been used for many years for meetings of the P. O. S. of A. before a special building was erected in 1937, as hereinafter stated.

Whatever may have been the respondent's purpose in erecting the building, or whatever may have been the respondents' statement of policy at the time that the P. O. S. of A. was first granted the use of the hall, such purpose and policy are not material to the issues herein involved. As a matter of practice, since 1937, the hall has been used, according to the credible testimony of Black, on numerous occasions for community and employee meetings. Various churches have used the hall for banquets; "Ladies Aid" societies have gathered there; the North Belmont School had the use of the hall for at least one Christmas party; and for several weeks employees of the respondents attended a "Safety school" held in the hall.[8] That no other fraternal order met there is explained by the fact, established by Stowe's testimony, that the P. O. S. of A. is the only such organization in North Belmont. Furthermore, Black's credible testimony is undisputed that it was the practice, when any other organization wanted to use the hall, for the P. O. S. of A. "lodge" itself to pass upon the request. There is no evidence that any other organization, except the Union, was ever refused use of the hall, either by the P. O. S. of A. or by the respondent.

The evidence is clear, and we find, that Stowe's refusal, on behalf of all four respondents, to permit use of the hall for purposes of self-organization in a labor union under the circumstances, constituted unlawful disparity of treatment and discrimination against the Union.[9]

The respondents contend that their refusal to permit the use of their private property was within their constitutional rights. The contention has no merit. We have held, and the Supreme Court of the United States has confirmed the view, that when an employer's right to regulate the use of his own property comes into conflict with the employees' right to receive information to enable them to exercise their right to self-organization, which it is the policy of the Act to encourage, the conflicting rights must be balanced to determine which right, in a given situation, is paramount.[10]

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[8] The respondents admit in their brief that churches and other civic groups have used the hall with the permission of the P. O. S. of A., but argue that granting the hall for church suppers is unlike granting it for a union meeting, church suppers being a P. O. S. of A. activity because members of the lodge made up the membership of the churches. Inasmuch as employees of the respondents made up the membership of the lodge, a union meeting, by the respondents' own standard, likewise constitutes a P. O. S. of A. activity.

[9] See, for example, *Matter of Weyerhauser Timber Co.*, 31 N. L. R. B. 258, 266-267; *Matter of Gallup American Coal Company*, 32 N. L. R. B. 823, enf'd 131 F. 2d 665; *Matter of Ozan Lumber Company*, 42 N. L. R. B. 1073.

[10] *Matter of LeTourneau Company of Georgia*, 54 N. L. R. B. 1253, 1259, enf'd 324 U. S. 793.

The "right to self-organization" is more than an intangible concept. The history of labor organization has established a pattern of methods almost universally utilized by employees in self-organization, deprivation of any one of which makes inroads upon the "right."[11] Foremost among these methods is the general meeting,[12] the *sine qua non* of all true collective action, the basic constitutional right of peaceable assembly.[13] The respondents do not deny the existence of the abstract right of their employees to meet for purposes of self-organization. However, by refusing to permit the Union to use the only available meeting place in the community, a hall erected and used by the respondents for the benefit of citizens isolated from other public facilities by virtue of their employment in the community, the respondents in fact deprived their employees of this basic right. The respondents do not claim that "inconvenience" or "dislocation of property rights" would result from the Union's use of its property.[14] Indeed, no reason at all was offered by the respondents' agent Stowe for countermanding Black's grant of permission to Harris to use the hall. Against the bare property right urged by the respondents, the necessity of the employees for a place to hold an organizational meeting clearly preponderates.[15]

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[11] "* * * The right of self-organization and collective bargaining is a complex whole, embracing the various elements of meetings, speeches, peaceful picketing, the printing and distribution of pamphlets, news and argument, all of which, however, are traceable to the fundamental liberties of expression and assembly. So compounded, the right to self-organization and collective bargaining is fundamental, being one phase of the process of free association essential to the democratic way of life." Violations of Free Speech and Rights of Labor, 77th Cong., 2d Sess., Senate Report No. 1150, Part 1, pp. 4-5. See also *Matter of LeTourneau Company of Georgia*, cited *supra*.

[12] "Your Union's affairs are carried on by the membership in membership meetings * * * It is important if the Union is to do the job you want it to do that you attend these meetings and be ready to take part in working out the answers to our common problems * * *" International Union, UAW-CIO, *How to Conduct a Union Meeting*. Education Department Publication No. 4, p. 3. "Usually the government of the local union rests with the mass meeting, the members gathering together ever so often to transact their business." Cummins, E. C., *The Labor Problem in the United States*, New York, 1935, p. 167. "* * * A meeting of the workers is usually called to agree upon their demands and to select their spokesmen * * *" International Ladies Garment Workers' Union, *Handbook of Trade Union Methods*, New York, 1937, p. 13.

[13] See *Hague* v. *C. I. O.*, 307 U. S. 496.

[14] Cf. *Matter of LeTourneau Company of Georgia*, *supra*, and cases cited therein.

[15] See *N. L. R. B.* v. *LeTourneau Company of Georgia*, 324 U. S. 793. Cf. *Marsh* v. *State of Alabama*, 66 S. Ct. 276, in which the Court stated:

"The more an owner for his advantage opens up his property for use by the public in general, the more do his rights become circumscribed by the statutory and constitutional rights of those who use it."

The dissenting opinion suggests that, had the respondents not prevented the Union from using company property for its organization meeting, we would, under Board precedents, be compelled to find the respondents guilty of activity violative of Section 8 (2) of the Act. The dissent states, in part, that "* * * the Board for years has construed the statute * * * as forbidding even the most minute kind of financial support to labor organizations," and cites a number of cases in support of the statement. The cited cases are illustrative only of the Board's consistent policy of taking into account, in any given situation, each of a number of facts and circumstances tending to establish domination or support of a labor organization, even though any one of them, standing alone, might perhaps be regarded as trivial.[16] In each of the cited cases, the Board considered a certain kind of aid rendered to a labor organization as part of many facts and circumstances which, taken together, established that the respondent had dominated or supported that organization. And this approach has been accepted by the courts.[17]

Under ordinary circumstances, where facilities other than company property are available to employees for the purposes of holding union meetings, we would view with suspicion an employer's conduct in supplying a meeting place. However, in a company town, where all meeting facilities are owned by the employer, the use of such facilities by a labor organization is necessary if the employees are really to be free to exercise their rights under the Act. The mere granting of a meeting place to a union by an employer under the conditions present here would not, therefore, in and of itself constitute unlawful assistance to that union, as the dissent suggests. This is particularly true in view of the fact that the Union offered to pay for

[16] For examples of cases wherein the Board, because of surrounding circumstances, has refused to characterize mere financial aid to a union as violative of Section 8 (2) of the Act, see *Matter of Mallinckrodt Chemical Works*, 63 N. L. R. B. 373; *Matter of Mohawk Carpet Mills, Inc.*, 12 N. L. R. B. 1285.

[17] See e. g., *N. L. R. B.* v. *Sun Shipbuilding & Dry Dock Co.*, 135 F. 2d 15, (C. C. A. 3); *N. L. R. B.* v. *Christian Board*, 113 F. 2d 678 (C. C. A. 8), wherein the court said, at p. 683: "The respondent complains that the Board has seized upon trivialities in finding that respondent lent support to the Employees Committee. Reference is made to the fact that the Board found that the respondent permitted a typewriter belonging to it to be used in the preparation of the petition and that respondent granted the Committee the use of its assembly room for the meeting of June 19, 1937." Little need be said on this point. These acts of respondent were but part of the general background upon which the Board reached its conclusion that the respondent desired to encourage the Employees Committee. As isolated instances of support, they are not particularly important but when considered with all other circumstances they form an entirely adequate basis for the Board's conclusion.

the hall.[18] Moreover, one of the respondents evidenced a clear-cut anti-union bias in the discharge of leaders of the very same union, as hereinafter set forth.

Upon the foregoing considerations, including the arbitrariness of D. P. Stowe's decision which resulted in the discriminatory treatment of the Union in the use of the respondent's property, we find that the sole purpose of D. P. Stowe's action, for which all the respondents are accountable, was to impede, prevent, and discourage self-organization and collective bargaining by the respondents' employees within the meaning of Section 7 of the Act. Moreover, irrespective of the respondents' motive, we are convinced, and find upon the consideration stated above, that by refusing to permit their employees to exercise the right to meet on company-owned property for the purpose of holding a union meeting, when no other suitable property in the community was available for the purpose, under the circumstances set forth above, the respondents have placed an unreasonable impediment on freedom of communication and of assembly essential to the exercise of employees' rights guaranteed by Section 7 of the Act. By their conduct in revoking the grant of privilege to use the hall and thus denying the use of the hall to the Union, the respondents Stowe, Acme, Perfection, and Linford interfered with, restrained, and coerced their employees in the exercise of the rights guaranteed in Section 7 of the Act; in violation of Section 8 (1) thereof.[19]

2. The respondent Stowe's discharge of the Hall and Gainey families

(a) *Events antedating the discharge of John R. Hall and Lillie E. Hall*

As noted above, during the latter part of January 1945, John R. Hall began openly and actively to assist Gainey in organizing employees at the Stowe mill.

Hall and his wife, Lillie E. Hall, were employed by the respondent Stowe in October 1944. As employees, they were permitted to occupy one of the company-owned houses. Before

[18] *See Matter of Standard Oil Company of California*, 61 N. L. R. B. 1251, wherein the Board, by dictum, approved an independent union's meeting on company-owned property for which it paid a small yearly rental.

[19] Although the complaint alleges that only the rights of the employees of the respondent Stowe were thus interfered with, in view of the closely-knit nature of the community of four mill villages, it is reasonable to infer, and we find, that knowledge of the respondents' refusal was shared by employees of the other respondents as well. The refusal served not only as a deterrent to self-organization among the respondent Stowe's employees, but also to such organization among employees of the other respondents.

his employment by the respondent Stowe, Hall had had many years' experience in textile mills, and in the preceding 10 years had served as a spinning room doffer, as a section hand, and as a second hand, both of the latter positions being supervisory. For a few weeks at the Stowe mill, Hall worked as a doffer on the second shift. He then was also assigned to the first shift, as head doffer, with supervision over three doffers.[20] Thereafter, until his discharge in February 1945, Hall worked two 8-hour shifts a day, 6 days a week. From the beginning of December, except during Christmas week, Hall worked from 80 to 96 hours each week until his discharge. As head doffer on the first shift, he received 51 cents an hour, and as doffer on the following shift, he was paid at the rate of 50 cents an hour. Mrs. Hall was employed as a spinner.

No regular lunch periods are given to employees at this mill; they eat during their working time. Throughout the period during which Hall worked two shifts a day, he was accustomed to go to his company-owned home, about 100 yards from the mill, twice each day for meals, in the morning for breakfast, and later in the day for lunch.[21] Mrs. Hall worked on the third shift, from 11 at night until 7, the next morning.

On the morning of February 10, 1945, Mr. Hall arrived at work at 6:45. About half an hour later, having completed doffing several frames, Hall went home for breakfast as usual. When he returned, about half or three-quarters of an hour thereafter, Second Hand Floyd Childers told Hall that he would have to stay on this job and "run it better." This was the first time Childers had reprimanded Hall.[22] A few minutes later, Overseer John A. McCarn approached Hall and also told him that he would have to stay on the job. Hall became angry, and raised a question concerning the nature of the work he was required to do on the second shift, stating, according to his own testimony, that "before I would be around piecing up behind the doffers, I would quit." McCarn testified that Hall said merely, "I quit," that McCarn then said, "All right," whereupon

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[20] Hall directed the work of three doffers and worked along with them. He was not a supervisory employee within the Board's usual definition of the term. However, assuming that he was a supervisor, the respondent does not take the position that his supervisory position affected the case in any way. We find, therefore, that Hall's discharge was not effected to protect the respondent's position of neutrality.

[21] That Hall had followed this practice is established by his testimony, which we credit. Second Hand Floyd Childers, Hall's immediate supervisor, denied that it was customary for Hall to go to his house for breakfast "unless he got permission from me." Childers admitted, however, that the three doffers under Hall could leave without obtaining permission. We do not credit such testimony of Childers insofar as it conflicts with that of Hall.

[22] Hall's testimony on this point, which we credit, is uncontradicted.

Hall declared that he would not quit. McCarn said, according to his own testimony, "You done quit," and added, according to Hall's unrefuted testimony: "Well, you empty my house and I will call it not running your job." [23]

Hall left the mill and went to see Gainey, the leader among the employees in their efforts to organize. Gainey and Hall went to the office of Superintendent C. W. Kale, where Gainey informed the superintendent that Hall, "one of our Union members," had been laid off, and asked to have him put back to work. Kale said that he would "look into" the matter. Neither Hall nor Gainey heard anything further from Kale, and on or about February 19, 1945, Hall and his wife vacated their company-owned dwelling. Neither has been recalled to work by the respondent Stowe.

A few days after Mr. Hall's employment ceased, Mrs. Pearl Cavendar, a spinner who had worked on frames of which Hall had charge as head doffer, asked McCarn whether Hall had left the mill. McCarn replied that Hall had, and that he, McCarn believed that Hall was a union organizer and had been "signing up" employees in the Union.[24]

(b) *The respondent Stowe's contention as to Mr. and Mrs. Hall*

The respondent Stowe contends that Mr. and Mrs. Hall voluntarily quit their employment. The Trial Examiner found that both were discharged because of their union membership and Mr. Hall's union activity.

Throughout his testimony McCarn insisted, despite the fact tha his version of the conversation with Hall on February 10 did not differ materially on the point from that of Hall, that Hall was not discharged but quit voluntarily. Asked at the hearing why he did not accept Hall's immediate change of mind as to quitting, McCarn replied: "I felt like that the way he was doing, I would be better off without him."

His only explanation of his reference to "the way he was doing" was to assert at the hearing that Hall "had his frames down." By the context McCarn thus apparently meant that some frames had not been doffed during Hall's absence at

[23] In most major respects, McCarn corroborated or did not deny Hall's testimony concerning the incident described above. The incident is reconstructed hereinafter.

[24] Cavendar's testimony as to this incident, which we credit, is uncontradicted.

breakfast.[25] Later in his testimony McCarn in effect contradicted his previous assertion that Hall's work that morning was unsatisfactory by stating without qualification that he had been ready and willing to continue Hall on the job and would have done so except for the fact that he quit. Thereafter, he testified that he "didn't want him back." When the inconsistency in his claims was called to his attention and he was asked at the hearing to clarify his position, McCarn replied: "Well, his work was not satisfactory by doing the way he was doing and he quit, holding up my production."

We do not credit McCarn's testimony that Hall's work was unsatisfactory or that he effectively quit.

It is also significant, as Superintendent Kale and McCarn testified in effect, that, although employees frequently quit, they "very often" called them in to "straighten them out"; however, no such effort was made in the case of Hall, although the mill was short of doffers at the time.

In quick reconstruction of the events on the morning of February 10, credible evidence shows in substance: (1) that, when for the first time Hall was reprimanded for going to breakfast he became irritated, a not unreasonable state of mind for a man who for months had been working 80 to 96 hours each week; (2) that he threatened to quit and quickly withdrew the threat; and (3) that McCarn ignored the withdrawal, terminated Hall's employment, and ordered him to vacate his company-owned dwelling.

Under the circumstances, we find that Hall was discharged, and that there is no merit in the respondent Stowe's contention that Hall voluntarily quit. The reason for his discharge is discussed hereinafter.

As to Mrs. Hall, the record is practically barren of evidence. The respondent Stowe contends that she quit its employ sometime before her husband did. The record indicates that she had not worked, because of illness, for a week or two before February 10, but there is no evidence that her name had been removed from the pay roll or that she had informed the re-

[25] The record contains a good deal of confused and conflicting testimony as to the actual number of frames which became ready for doffing, during Hall's absence. In view of McCarn's testimony, noted hereinafter, to the effect that nothing Hall had done or not done was of sufficient cause to discharge him, and that he would have remained at work had he not quit, we consider it unnecessary to resolve the conflicting testimony on this point. Whatever may have been the number of idle frames, Second Hand Childers' testimony established the facts that one or more of the three doffers under Hall were late that morning, that he had had to go and look for all three and that he "had to send for them quite a lot." There is no evidence that he had ever had to send for Hall. McCarn testified that, until that morning, Hall's work "had been very satisfactory."

spondent that she would not return to work upon recovery from her illness. On the other hand, although she was evicted from the respondent Stowe's house, we do not agree with the Trial Examiner that she was discharged thereby. Inasmuch as the respondent Stowe did not require its employees to live in Stowe-owned houses, so far as appears, Mrs. Hall could have continued to work for Stowe after her eviction while living elsewhere. Up to the time of the hearing she had not returned to the respondent's plant and had not reported for work or otherwise requested employment. Although a suspicion arises from the circumstances under which her husband was ordered to vacate his house that, had she returned, she would have been denied work, we cannot find, on the basis of the record, that Mrs. Hall was discharged. We shall, therefore, dismiss the complaint insofar as it alleges that Lillie E. Hall was discriminatorily discharged.

(c) *Events antedating the discharge of George W. Gainey, Mabel Gainey, and Emma Louise Gainey*

George W. Gainey, his wife, Mabel, his daughter, Emma Louise, and a son, Alfred, began to work for the respondent Stowe in February 1943. Gainey had worked in textile mills for 27 years, his wife for 25 years.

As noted heretofore, Gainey was the leader among the respondent Stowe's employees in their efforts to organize in the Union. In that capacity he unsuccessfully interceded for Hall with Superintendent Kale after Hall's discharge on February 10.

A week or two before February 24, 1945, Gainey had a conversation with McCarn in the mill. In the conversation McCarn stated, "They tell me the Union is going pretty hot around here." Gainey answered that it was getting along pretty well. McCarn then stated that a union was unnecessary because the Government set both prices and wages, and then asked Gainey, "who all belong to it?" Gainey replied that a good many belonged. McCarn named specific individuals and asked if each was a member. Finally, McCarn asked if Gainey himself belonged, and Gainey admitted that he and his family had joined.[28]

[28] McCarn was not specifically questioned concerning the above-described conversation with Gainey, upon whose credible testimony the findings as to the conversation rest. At the hearing counsel for the respondent Stowe read to McCarn several allegations in the complaint, and McCarn denied each of them. We do not consider his general denials to be sufficient to negate the specific and detailed testimony of Gainey.

On the morning of February 24, 1945, when McCarn discharged a boy for not doing his work properly, 18-year-old Alfred Gainey, in protest against the boy's discharge, quit his job as doffer for the respondent Stowe. McCarn made no effort to see Alfred's father or mother, but at once gave instructions to Overseer James H. Ballard to discharge all others in the family when they came to work on the next shift. Ballard carried out these instructions.[27] Thus, George W. Gainey, Mabel Gainey, and Emma Louise Gainey were discharged on February 24, 1945.

(d) *The respondent's contentions as to the discharge of the Gaineys*

The respondent Stowe contends that Gainey, his wife, and his daughter were discharged because Alfred Gainey quit; and as a result, the respondent needed their dwelling in order to house another doffer to take Alfred's place.

Of relevance to a determination of the merit of this contention are the following facts: (1) Mrs. Gainey's production record was above average; (2) there had never been any complaint about George Gainey's workmanship; (3) the only comment Superintendent Kale had received as to Gainey's daughter was that "she was rather young"; and (4) no doffer had applied for work or was awaiting employment at the time that Alfred Gainey quit on February 24. Although Kale asserted at the hearing that it was a "practice" to discharge an entire family when one member quit, if they were living in a company-owned house, no credible evidence was offered to support this assertion. Furthermore, Kale testified that not all employees lived in company-owned homes, some lived in town or in the country nearby, and he admitted at the hearing that there was no reason why he did not suggest to Gainey that he continue to work and seek a dwelling not on company property.

Under the circumstances, we are convinced and find that there is no merit in the respondent's contentions that it was the respondent Stowe's practice to evict all members of a family from a company-owned house whenever one member cease working for the respondent, or that the Gainey dwelling was needed to house another doffer. It is clear and we further find, that the respondent Stowe seized upon Alfred's quitting as a pretext and that the reason for discharging the other members of the Gainey family lay elsewhere.

[27] The findings as to these events rest upon the testimony of McCarn and Ballard.

(e) *Conclusions as to the discriminatory discharges of Hall and the Gaineys*

It has been found that the respondent Stowe's contentions as to its reasons for terminating the employment of the Gainey family are without merit and that Hall did not voluntarily quit, as the respondent Stowe contends, but rather was discharged.

It has also been found that George Gainey and John Hall were, before being discharged, the two leaders of the Union movement among the respondent Stowe's employees. McCarn admitted in his testimony that he knew of Gainey's union membership, and as found above, McCarn told employee Cavendar, after Hall's discharge, in discussing the termination of his employment, that he, McCarn, believed that Hall was a union organizer who had enrolled employees in the Union. Kale testified that he had seen literature distributed by Hall and Gainey and that he, Kale, knew of "some activity around there." We conclude and find that management representatives responsible for the discharges of Hall and the three Gaineys were aware of their union activity.

The respondent Stowe's antipathy toward the Union and the disparity of treatment accorded to it have been found in Section III, B, 1, (b), above.

From its anti-union conduct, and from the lack of merit in the respondent Stowe's explanation of the termination of employment of one union leader, and in the reasons it advanced for terminating the employment of another union leader and his family, it is reasonable to infer,[28] and we find, that the respondent discharged Hall and the Gainey family because of their union membership and activity, thereby discouraging membership in the Union.[29]

Upon the entire record, we find that, by discharging John R Hall, George W. Gainey, Mabel Gainey, and Emma Louise Gainey, the respondent Stowe discriminated with respect to

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[28] See *N. L. R. B.* v. *Link Belt Co.*, 311 U. S. 584, in which the court, at 602, states: "The evidence as to inefficiency is quite inconclusive. The Board was justified in relying on circumstantial evidence of discrimination and was not required to deny relief because there was no direct evidence that the employer knew these men who had joined Amalgamated and was displeased or wanted to make an example of them."

[29] During the hearing counsel for the respondent Stowe elicited testimony showing that sometime after being discharged from the Stowe mill, Hall was employed by a company in Belmont, North Carolina, of which the president of the respondent Stowe is secretary-treasurer, and that sometime after his discharge, Gainey was employed by the respondent Linford. It is argued that such evidence refutes the contention that the respondent Stowe had discriminated against either Hall or Gainey. We have considered such testimony but deem it not controlling here.

their hire and tenure of employment, thereby discouraging membership in the Union, and interferring with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8 (3) and (1) thereof. We further find, that, by the anti-union statements of McCarn and by his interrogation of employees as to their union membership, as set forth above, the respondent Stowe further interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8 (1) thereof.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the respondents, set forth in Section III, above, occurring in connection with the operation of the business of the respondents described in Section I, above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that the respondents have engaged in unfair labor practices, we shall order that they cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

It has been found that the respondent Stowe discriminated as to the hire and tenure of employment of John R. Hall on February 10, 1945, and of George W. Gainey, Mabel Gainey, and Emma Louise Gainey, on February 24, 1945. In order to effectuate the purposes and policies of the Act, we shall order that the respondent Stowe offer the above-named employees immediate reinstatement to their former or substantially equivalent positions, without prejudice to their seniority and other rights and privileges, including the privilege of immediate occupancy of a company-owned house, if available, and if not immediately available, then as soon as vacancies occur. We shall also order that the respondent Stowe make each of the above-named employees whole for any loss of pay that they have suffered by reason of the respondent Stowe's discrimination, by payment to each of them of a sum of money equal to the amount each normally would have earned as wages from the date of the dis-

criminatory discharge to the date of the offer of reinstatement, less the net earnings of each during such period.[30]

Having found that the respondents interfered with, restrained, and coerced their employees in the exercise of the right to self-organization and collective bargaining by denying the use of the only suitable meeting place in the community to them, and to an organization which sought to inform them of their rights and to represent them for the purposes of collective bargaining if the employees so desired, we shall order the respondents to cease and desist from denying to their employees and to labor organizations the right to meet for purposes of self-organization and collective bargaining in the P. O. S. of A. hall, and, upon request, to grant to all employees of the respondents, and to Textile Workers of America, C. I. O., or any other labor organization, the use of the P. O. S. of A. hall for the purpose of holding meetings pertaining to self-organization or collective bargaining.

Upon the basis of the above findings of fact and upon the entire record in the case, the Board makes the following:

Conclusions of Law

1. Textile Workers Union of America, C. I. O., is a labor organization, within the meaning of Section 2 (5) of the Act.

2. By discriminating in regard to the hire and tenure of employment of John R. Hall, George W. Gainey, Mabel Gainey, and Emma Louise Gainey, thereby discouraging membership in Textile Workers Union of America, C. I. O., the respondent Stowe Spinning Company has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (3) of the Act.

3. By interfering with, restraining, and coercing their employees in the exercise of the rights guaranteed in Section 7 of the Act, the respondents Stowe Spinning Company, Acme Spinning Company, Perfection Spinning Company, and Linford Mills, Inc., have engaged in and are engaging in unfair labor practices, within the meaning of Section 8 (1) of the Act.

4. The aforesaid unfair labor practices are unfair labor practices affecting commerce, within the meaning of Section 2 (6) and (7) of the Act.

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[30] By "net earnings" is meant earnings less expenses, such as for transportation, room, and board, incurred by an employee in connection with obtaining work and working elsewhere than for the respondent Stowe, which would not have been incurred but for his or her unlawful discharge, and the subsequent necessity for seeking employment elsewhere. *See Matter of Crossett Lumber Company*, 8 N. L. R. B. 440. Moneys received for work performed upon Federal, State, county, municipal, or other work-relief projects shall be considered as earnings. *See Republic Steel Corporation* v. *N. L. R. B.*, 311 U. S. 7.

5. The respondent Stowe Spinning Company has not engaged in unfair labor practices, within the meaning of Section 8 (3) of the Act, as to Lillie E. Hall.

ORDER

Upon the basis of the foregoing findings of fact and conclusions of law, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, Stowe Spinning Company, North Belmont, North Carolina, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership in Textile Workers Union of America, C. I. O., by discriminatorily discharging any of its employees or by discriminating in any other manner in regard to their hire and tenure of employment or any term or condition of their employment;

(b) Refusing to permit the use of the Patriotic Order Sons of America hall by its employees or employees of Acme Spinning Company, Perfection Spinning Company, or Linford Mills, Inc., or by Textile Workers Union of America, C. I. O., or any other labor organization, for the purpose of self-organization or collective bargaining;

(c) In any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form labor organizations, to join or assist Textile Workers Union of America, C. I. O., or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the Act.

2. Take the following affirmative action, which the Board finds will effectuate the policies of the Act:

(a) Offer to John R. Hall, George W. Gainey, Mabel Gainey, and Emma Louise Gainey immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority and other rights and privileges;

(b) Make whole the employees named in paragraph 2 (a), above, for any loss of earnings that they may have suffered by reason of the respondent's discrimination against them, by payment to each of them of a sum of money equal to the amount which each normally would have earned as wages from the date of the discriminatory discharge to the date of the respondent's offer of reinstatement, less his or her net earnings during said period;

(c) Upon request, grant to its employees and employees of Acme Spinning Company, Perfection Spinning Company, or Linford Mills, Inc., and to Textile Workers of America, C. I. O., or any other labor organization, the use of the Patriotic Order Sons of America hall for the purposes of self-organization or collective bargaining;

(d) Post at its mill in North Belmont, North Carolina, copies of the notice attached hereto, marked "Appendix A". Copies of said notice, to be furnished by the Regional Director for the Fifth Region, shall, after being duly signed by the respondent's representative, be posted by the respondent immediately upon receipt thereof, and maintained by it for sixty (60) consecutive days thereafter, in conspicious places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the respondent to insure that said notices are not altered, defaced, or covered by any other material;

(e) Notify the Regional Director for the Fifth Region in writing, within ten (10) days from the date of this Order, what steps the respondent has taken to comply herewith.

Upon the basis of the above findings of fact and conclusions of law, and pursuant to section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondents Acme Spinning Company, Perfection Spinning Company, and Linford Mills, Inc., and their officers, agents, successors and assigns, shall:

1. Cease and desist from interfering with, restraining, or coercing their employees in the exercise of the right to self-organization, to form labor organizations, to join or assist Textile Workers Union of America, C. I. O., or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection as guaranteed in Section 7 of the Act, by refusing to permit the use of the Patriotic Order Sons of America hall by employees of any of the respondents' mills, including the employees of the respondent Stowe Spinning Company, or by Textile Workers Union of America, C. I. O., or any other labor organization, for the purposes of self-organization or collective bargaining.

2. Take the following affirmative action, which the Board finds will effectuate the policies of the Act:

(a) Upon request, grant to all persons employed in the said respondents' mills, and to employees of Stowe Spinning Company, and to Textile Workers Union of America, C. I. O., or any other labor organization, the use of the Patriotic Order

Sons of America hall for the purposes of self-organization or collective bargaining;

(b) Post at each of their mills in North Belmont, North Carolina, copies of the notice attached hereto, marked "Appendix B". Copies of said notice, to be furnished by the Regional Director for the Fifth Region, shall, after being duly signed by the respective representative of each respondent be posted by the respondents immediately upon receipt thereof, and maintained by it for sixty (60) consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the respondents to insure that said notices are not altered, defaced, or covered by any other material;

(c) Notify the Regional Director for the Fifth Region in writing within ten (10) days from the date of this Order, what steps the respondents have taken to comply herewith.

It is further ordered that the complaint, insofar as it alleges that the respondent Stowe Spinning Company discriminated in regard to the hire and tenure of employment of Lillie E. Hall, within the meaning of Section 8 (3) of the Act, be, and it hereby is, dismissed.

Signed at Washington, D. C., this 26 day of August, 1946.

[SEAL]

Paul M. Herzog,
PAUL M. HERZOG,
Chairman,
John M. Houston,
JOHN M. HOUSTON,
Members,
National Labor Relations Board.

GERARD D. REILLY, concurring in part, dissenting in part:

While I agree with the conclusions of my colleagues with respect to findings of discrimination in violation of Subsection 8 (3), the holding that the Company was under a duty to supply the Union with the use of its hall for organizational purposes is such an abrupt reversal of the position that this Board has taken in scores of cases that I am constrained to disagree.

Subsection 8 (2) of the Act, which makes it unlawful for an employer to contribute financial support to a labor organization, contains only one exception, namely, a proviso that an employer may have conferences with representatives of his employees on union matters during working hours without deducting the loss of time from their wages. Since this excep-

tion is so narrow, the Board for years has construed the statute (to my mind, correctly) as forbidding even the most minute kind of financial support to labor organizations. It has frowned, for example, upon letting a union organization have the profits from vending machines, even though patronized exclusively by members of the bargaining unit;[31] on the use of company office machines for preparing pamphlets;[32] the use of vacant office space for the transaction of union business;[33] and mere permission to hold union meetings on factory premises.[34] Indeed, this principle has been enunciated in so many cases that any employer who consulted counsel would be loath to let a labor organization conduct a meeting in a building owned by him for fear of incurring the risk of being cited for violation of Subsections 8 (1) or (2) of the Act.

Yet, in this case, we are holding it a violation of the Act for a corporation to refuse to permit an affiliated union to use a hall which was built to afford recreational facilities for its employees. It seems to me that such a decision assumes a duty on the part of the employer to give affirmative support to labor organizations—a premise contrary to the specific language in the Act and the converse of the doctrines developed by this Board with respect to employer attitudes toward independent unions.

Signed at Washington, D. C., this 26 day of August 1946.

Gerard D. Reilly,
GERARD D. REILLY,
Member,
National Labor Relations Board.

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[31] *Wilson & Co.* v. *N. L. R. B.*, 126 F. (2d) 114 (C. C. A. 7).

[32] *N. L. R. B.* v. *General Motors Corp.*, 116 F. (2d) 306 (C. C. A. 7); *Bethlehem Shipbuilding Corp.* v. *N. L. R. B.*, 114 F. (2d) 930 (C. C. A. 1); *N. L. R. B.* v. *Carlisle Lumber Co.*, 94 F. (2d) 138 (C. C. A. 9); *N. L. R. B.* v. *Christian Board*, 113 F. (2d) 678 (C. C. A. 8); *N. L. R. B.* v. *Norfolk Shipbuilding & Drydock Corp.*, 109 F. (2d) 128 (C. C. A. 4) enf. as mod. 12 N. L. R. B. 886.

[33] *N. L. R. B.* v. *American Mfg. Co.*, 106 F. (2d) 61 (C. C. A. 2) enf. as mod. 5 N. L. R. B. 443, aff'g as mod. 306 U. S. 229; *N. L. R. B.* v. *Automotive Maintenance Machinery Co.*, 116 F. (2d) 350 (C. C. A. 7) (dictum); *N. L. R. B.* v. *Brown Paper Mill Co.*, 108 F. (2d) 867 (C. C. A. 5); *N. L. R. B.* v. *Carlisle Lumber Co.*, 94 F. (2d) 138 (C. C. A. 9); *N. L. R. B.* v. *Christian Board*, footnote 2, *supra*; *N. L. R. B.* v. *Friedrich, Inc., Ed.*, 116 F. (2d) 888 (C. C. A. 5); *N. L. R. B.* v. *Moore-Lowry Flour Mills Co.*, 122 F. (2d) 419 (C. C. A. 10) mod. 21 N. L. R. B. 1040; *New Idea, Inc.* v. *N. L. R. B.*, 117 F. (2d) 517 (C. C. A. 7).

[34] See *Matter of Virginia Electric & Power Company*, 44 N. L. R. B. 404, and *Matter of Berkshire Knitting Mills*, 46 N. L. R. B. 955.

APPENDIX A

Notice to All Employees Pursuant to a Decision and Order

of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

We Will Not in any manner interfere with, restrain, or coerce our employees in the exercise of their right to self-organization, to form labor organizations, to join or assist Textile Workers Union of America, C. I. O. or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection.

We Will Offer to the employees named below immediate and full reinstatement to their former or substantially equivalent positions without prejudice to any seniority or other rights and privileges previously enjoyed, and make them whole for any loss of pay suffered as a result of the discrimination: John R. Hall, George W. Gainey, Mabel Gainey, Emma Louise Gainey.

We Will Not refuse to permit the use of the Patriotic Sons of America hall by our employees and other employees of the North Belmont, North Carolina Mills, or by Textile Workers Union of America, C. I. O., or any other labor organization, for the purposes of self-organization or collective bargaining. Upon request, we will grant to our employees and to other employees of the North Belmont mills, and to Textile Workers Union of America, C. I. O., or any other labor organization, the use of Patriotic Order Sons of America hall for the purposes of self-organization or collective bargaining.

All our employees are free to become or remain members of the above-named union or any other labor organization. We will not discriminate in regard to hire or tenure of employment or any term or condition of employment against any employee because of membership in or activity on behalf of any such labor organization.

Stowe Spinning Company.
(Employer)

Dated ..... By .....
(Representative) (Title)

Note: Any of the above-named employees presently serving in the armed forces of the United States will be offered full reinstatement upon application in accordance with the Selective Service Act after discharge from the armed forces.

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

APPENDIX B

NOTICE TO ALL EMPLOYEES PURSUANT TO A DECISION AND ORDER

of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

We Will Not interfere with, restrain, or coerce our employees in the exercise of their right to self-organization, to form labor organizations, to join or assist Textile Workers Union of America, C. I. O., or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection by refusing to permit the use of the Patriotic Order Sons of America hall by our employees or other employees of the North Belmont, North Carolina mills, or by Textile Workers Union of America, C. I. O., or any other labor organization, for the purposes of self-organization or collective bargaining.

Upon request, we will grant to our employees and to other employees of the North Belmont mills, and to Textile Workers Union of America, C. I. O., or any other labor organization, the use of Patriotic Order Sons of America hall for the purposes of self-organization or collective bargaining.

.....
(Employer)

Dated..... By.....
(Representative) (Title)

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

[1] UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

FIFTH REGION

Case No. 5–C–1887

In the Matter of STOWE SPINNING COMPANY, ACME SPINNING COMPANY, PERFECTION SPINNING COMPANY, LINFORD MILLS, INC. *and* TEXTILE WORKERS UNION OF AMERICA, C. I. O.

SUPERIOR COURT ROOM,
GASTON COUNTY COURT HOUSE,
GASTONIA, NORTH CAROLINA,
Monday, October 15, 1945.

The above-entitled matter came on for hearing at 10:30 o'clock a. m., E. S. T., pursuant to notice.

Before C. W. WHITTEMORE, Trial Examiner.

Appearances: John H. Garver, Esq., Baltimore, Maryland, for National Labor Relations Board. P. C. Whitlock, Esq., Law Building, Charlotte, North Carolina; for Stowe Spinning Company, Belmont, North Carolina. George B. Mason, Esq., Gastonia, North Carolina, for Acme Spinning Company, Belmont, North Carolina. [2] Hardy B. Gaston, Esq., Belmont, North Carolina; for Perfection Spinning Company, Belmont, North Carolina. L. B. Hollowell, Esq., Gastonia, North Carolina; for Linford Mills, Inc., Belmont, North Carolina. Nancy Blaine, Armington Hotel, Gastonia, North Carolina; for Textile Workers Union of America, C. I. O., 1011 Independence Building, Charlotte, North Carolina. R. H. Harris, 207 Anderson Street, Durham, North Carolina; for Textile Workers Union of America (C. I. O.), 1011 Independent Building, Charlotte, North Carolina.

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[11] Mr. GARVER. Mr. Examiner, in connection with the allegations in the complaint concerning the operations of the Acme Spinning Company, as well as the admissions in the answer of the Acme Spinning Company and pursuant to the understanding just had while we were off the record, with counsel for the Acme Spinning Company, I would like to offer

to have stipulated in the record that respondent, Acme Spinning Company, in the course and conduct of its business, causes and has continuously caused a substantial amount of materials consisting principally of raw cotton valued in excess of one million dollars annually used in the manufacture, sale, and distribution of cotton yarn, to be purchased, delivered, and transported in interstate commerce from and through the States of the United States other than the State of North Carolina to a plant which [12] it operates in North Belmont, North Carolina, and causes and has continuously caused the products manufactured, sold, and distributed by it as a part of its business in the operation of the said plant, consisting of cotton yarn valued in excess of $1,500,000 annually, to be supplied, delivered, and transported in interstate commerce in and through the States of the United States other than the State of North Carolina from its said plant in North Belmont, North Carolina.

May the record show that stipulation, and I am directing my inquiry, of course, to counsel for the Acme Spinning Company.

Mr. MASON. No objection to that stipulation insofar as Acme is concerned.

Trial Examiner WHITTEMORE. Very well; thank you.

Mr. GARVER. I further offer to stipulate, together with the counsel for Stowe Spinning Company, Acme Spinning Company, Linford Mills, Inc., and Perfection Spinning Company, that each of said companies in the operation of their plants in North Belmont, North Carolina, that each one is engaged, separately, in commerce, within the meaning of the National Labor Relations Act.

May that stipulation be shown?

Mr. HOLLOWELL. It is admitted in the answer.

Mr. GARVER. I think that that is the meaning of the allegations and the admissions, but to avoid any question, may we [13] have that stipulation?

Mr. MASON. That stipulation is agreeable to Acme.

Mr. HOLLOWELL. Yes.

Mr. GARVER. May the record also show that the four named parties and counsel for the Board and representatives of the union stipualte that the Textile Workers Union of America, C. I. O., is a labor organization within the meaning of the National Labor Relations Act.

Mr. MASON. Acme is agreeable.

Mr. WHITLOCK. Stowe is agreeable.

Mr. GASTON. So is Perfection.

Mr. HOLLOWELL. So is Linford.

Trial Examiner WHITTEMORE. Thank you. I take it that the representatives of the union join in that stipulation?

Mr. HARRIS. We do.

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DE LAMBERT P. STOWE (Board witness).

* * *

[14] Direct examination by Mr. GARVER:

Q. Will you state your name, sir?—A. DeLambert P. Stowe.

Q. And where do you live, sir?—A. Belmont.

Q. And aproximately how long have you lived out at Belmont, North Carolina?—A. All my life.

Q. I do not mean to inquire about your age necessarily, but can you tell us at least about how many years that has been?—A. Oh, about 50.

Q. Where is North Belmont in relation to Belmont, North Carolina?—A. North of Belmont.

Q. North Belmont; is that a part of Belmont, or what is it?—A. That is an unincorporated little village.

Q. That is, North Belmont is?—A. Yes.

Q. I take it Belmont is the ordinary type of city that we are familiar with; is that right?—A. That is right.

Q. And how far is the center of the village of North Belmont from the center of Belmont?—[15] A. I would say two miles and a half.

Q. What does North Belmont consist of insofar as the layout of the residential district?—A. Well, the mills have their villages there.

Q. Well, how many mills are there in North Belmont?—A. Four.

Q. And are each one of those one of the mills of the respondents in this case?—A. Acme, Linford, Perfection, and Stowe Spinning.

Q. And is there a residential village, so called, mill village in connection with each one of those mills?—A. Yes.

Q. And those are all located in North Belmont?—A. Yes.

Q. Approximately how many houses are there in the village adjacent to the Stowe Spinning Company?—A. I do not know how many houses they have in that village.

Q. Can you give us a general idea. I am not going to question the exact accuracy.—A. Oh, I imagine probably 75, I don't know for sure.

Q. Now, of those houses, approximately of them—let me ask you this. I assume that a number of them are owned by the Stowe Spinning Company; is that correct?—A. I think that is correct.

Q. And what percentage of the houses that are adjacent to [16] the Stowe Spinning Company, the 75 or so, belong to the company?—A. I do not know. I am not connected with the Stowe Spinning Company, so I am not familiar with the village as to the number of houses they have.

Q. Which of the companies are you connected with?—A. Perfection Spinning.

Q. And what is your connection with Perfection?—A. Secretary-Treasurer.

Q. And where do you maintain your office?—A. 300 Bank Building.

Q. Is that in Belmont?—A. Yes, sir.

Q. In other words, that is not at the mill itself?—A. No.

Q. Is that right?—A. That is right.

Q. What is your connection, if any, with the—or what is your connection with the Acme Spinning Company?—A. I am a stockholder in Acme.

Q. About what percentage of the stock of Acme are you the owner of?—A. Very small amount.

Q. Who is the principal stockholder of the Acme Company?—A. I couldn't tell you that, I don't know.

[17] Q. Who are the other officers of Perfection besides yourself?—A. Mr. A. C. Lineberger is president.

Q. You say he is president?—A. That is right.

Q. Will you name the others, please?—A. Well, J. Harold Lineberger is vice president; that is all of the officers.

Q. And who are the officers of the Acme Spinning Company?—A. A. C. Lineberger is president; I am the vice president; J. Harold Lineberger is secretary-treasurer.

Q. Do you know what percentage of the stock of Perfection Spinning Company Mr. Lineberger holds?—A. Very small percentage.

Q. Do you know what percentage of the stock of the Acme Spinning Company he holds?—A. I do not.

Q. Who are the officers of the Linford Mills?—A. A. C. Lineberger is president; J. E. Ford, secretary-treasurer. I am not sure about the vice president, I don't remember.

Q. Are you the owner of any of the stock of the three mills?—A. Very small amount.

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[18] Mr. GARVER. Counsel has indicated that he can supply the name of the vice president of the Linford Mills.

Mr. MASON. J. Harold Lineberger.

Trial Examiner WHITTEMORE. Thank you.

By Mr. GARVER:

Q. Did I understand you to say that you are also a stockholder of the Linford Mills?—A. Yes; a very small amount.

Q. Do you know who is the larger holder of the stock of the Linford Mills?—A. I do not.

Q. And who are the officers of the Stowe Spinning Company?—A. C. T. Stowe is president; R. L. Stowe is the secretary-treasurer, I am not sure about the vice president of that either.

Mr. GARVER. Can counsel again also supply that?

Mr. MASON. Charles P. Stowe.

By Mr. GARVER:

Q. Mr. Stowe, I notice that the other officers, the officers of Stowe Spinning Company, of course, have the same name that you do. What is your relation, I assume that there is a relationship?—A. They are second cousins of mine.

Q. I am not particularly concerned with the geneology, but how are you related to the president of the Stowe Spinning Company, C. T. Stowe?—[19] A. First cousin.

Q. And how are you related to R. L. Stowe?—A. First cousin.

Q. And how are you related to Charles P. Stowe?—A. Second cousin.

Q. What is the full name of R. L. Stowe?—A. Robert Lee Stowe.

Q. Now, are you a holder of any stock in the Stowe Spinning Company?—A. Very small amount.

Q. Do you know who is holder of a large amount of stock?—A. No.

Q. Does Mr. Lineberger own any stock of the Stowe Spinning Company, Mr. A. C. Lineberger?—A. I couldn't say, I don't know.

Q. Now, I would like for you to describe the lay-out of North Belmont with respect to the location of the various mills and the villages; for instance, what is the relationship of the village of the Stowe Spinning Company to the village of the Acme Spinning Company?—A. Practically join one another.

Q. How far are the—what is the relationship of the village of Linford Mills to the village of Perfection Mills?—A. They join.

Q. How far is the mill of the Acme Company from the mill of [20] either Linford or Perfection Mills?—A. I would say it is about a half a mile from Linford and Perfection.

Q. In other words, the Acme and the Stowe Spinning Company villages are right together?—A. Part of the Acme village is next to Stowe, and part of Acme village lies between Linford and Perfection.

Q. And the villages of the Linford and Perfection are off together and adjacent to each other but they are separate and apart and at a distance from the villages of the Acme and the Stowe; is that correct?—A. That is right.

Q. Now, does North Belmont have a post office?—A. Yes, sir.

Q. And is it just one post office?—A. How is that?

Q. Is it just one post office?—A. Sure.

Q. And is that a break-down of the Belmont Post Office, or how is that?—A. Well, it is a suboffice; then they have rural delivery in the village in addition to the post office, from the Belmont Post Office.

Q. Now, where is the post office located in relation to the Acme and the Stowe villages?—[21] A. Well, it is a quarter of a mile, I would say, from the Stowe Spinning village, and it is on the edge of the Acme village.

Q. Would you say that the post office is more or less centrally located with respect to the Acme and the Stowe villages?—A. Well, it is centrally located for the Acme village and yes, for both of them. I was speaking of the mill when I said a quarter of a mile. The post office is not more than 500 yards from the village of the Stowe Spinning.

Q. In other words, the villages of Acme and Stowe are really right around the post office?—A. Well, yes, approximately.

* * *

By Mr. GARVER:

Q. Is there a school house in North Belmont?—A. Yes, a public school.

Q. Is that known as the North Belmont School?—[22] A. Yes.

Q. And what grades, do you know what grades of students go there?—A. I think they go up to the seventh grade, possibly.

Q. Is that the only school house in North Belmont?—A. Yes.

Q. And where is that located in relation to the post office?—A. Across the street.

Q. And principally what villages does the North Belmont Schoolhouse serve?—A. It serves all of them.

Q. All the four villages?—A. Yes.

Q. Now, is there a movie theatre in North Belmont?—A. Yes.

Q. And where is that in relation to the schoolhouse?—A. Across the street.

Q. And how is the movie located in relation to the post office?—A. Next door.

Q. You indicated that the school house is a public school; is that right?—A. That is right.

Q. I take it that none of the companies own any part of the school property?—[23] A. No.

Q. Do they own the land?—A. No.

Q. What building is the Post Office in?—A. P. O. S. of A. Building.

Q. Now, is the movie in a separate building?—A. Yes.

Q. Which is right next door to the building you have just referred to, that is a separately constructed building?—A. About 30 feet between them, I guess, about that.

Q. Is there anything else in the building that the movie is in?—A. No.

Q. Will you describe for us the building that you have just referred to as the P. O. S. of A. Building?—A. It has five store rooms on the first floor and a hall on the second floor which is used by the Patriotic Order Sons of America.

Q. And does the post office occupy one of the store rooms you have referred to?—A. That is right, post office and four other rooms, stores.

Q. Now, the post office, I take it, is one of the store rooms on the ground floor?—A. That is right.

Q. What kind of a structure building is it, by the way?—[24] A. Brick.

Q. Can you give us the general dimensions of the building, is it about 40 feet deep?—A. About 40 by 80, I believe, or something like that.

Q. And you say it has a second floor?—A. Yes.

Q. And does that second floor cover the same floor size of the building?—A. That is right.

Q. That is the second floor room is really a room 40 by 80?—A. Yes.

* * *

By Mr. GARVER:

Q. How are the other store rooms other than the post office on the first floor occupied?—[25] A. How are they occupied?

Q. Yes; I mean what is in them?—A. Grocery store, I believe there is one grocery store in all four of the other rooms.

Q. That is the other rooms have been opened up so that the same store may occupy them; is that right?—A. Yes; I think so, at least one man runs them all, at least he runs the grocery store, and I guess he runs them all; I don't know, I don't know whether they are all connected or not.

Q. I would like to direct your attention again to the North Belmont school. Do you know who the members of the North Belmont School Board are?—A. I know one, J. W. Miller, I believe, is one.

Q. Is Mr. Miller connected with one of the four companies?—A. He is superintendent of Perfection Spinning Company.

Q. Do you know whether J. W. Starnes is a member of the School Board?—A. Possibly so.

Q. And is that the Mr. Starnes that is superintendent of the Linford Mills?—A. Superintendent of the Linford; yes.

Q. And do you know whether Mr. J. O. Thrower is a member of the North Belmont School Board?—A. He used to be; I don't know whether he is still or not.

Q. That is J. O. Thrower who is overseer at the Acme, do you [26] know his position?

* * *

Mr. GARVER. While we were off the record, counsel for the Acme Company has indicated that his information is that Mr. J. O. Thrower is a member of the School Board and is an overseer at the Acme mill; is that correct?

Mr. MASON. Yes, sir.

By Mr. GARVER:

Q. Can you give us any figures as to the number of houses in the village attached to the Acme company?—A. No.

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Mr. MASON. Acme has two mill buildings and 158 houses; Stowe has 100 houses; Linford approximately 75; and Mr. Stowe has stated that Perfection has about 75, all company-owned.

Mr. GARVER. Mr. Mason, may that be shown as a statement in the record?

Mr. MASON. Yes, sir.

Mr. WHITLOCK. All right.

[27] By Mr. GARVER:

Q. Did you have anything to do with the plans for construction of the so-called P. O. S. of A. Building?—A. I did.

Q. And about when was that building constructed?—A. I think it was about 1937.

Q. And who constructed that building?—A. W. H. Hand and Sons, contractors.

Q. Who owns the building?—A. The four Belmont, North Belmont mills.

Q. And was that constructed. I mean who made the arrangements for it as far as ownership is concerned; was the construction for the four mills at that time——A. Yes.

Q. In other words, they were the original owners and are still the owners?—A. They own the property; yes.

Q. Do you know about when that was?—A. 1937, I think.

Q. How did it come about that—by the way, when was the movie, the other building built?—A. It was built about 1940.

Q. Will you tell us how it came about that that particular building was constructed in 1937?—A. The P. O. S. of A. building?

Q. Yes.—[28] A. Well, that building, we built it for a meeting place for the Patriotic Orders Sons of America.

Q. Are they charged in any way; that is, for the use of the building?—A. Rent-free.

Q. How did it happen that you did that for them?—A. Well, we put the stores on the first floor so that they—so that the revenue from those stores would take care of the expenses of the building.

Q. And I want to ask you a very obvious question, I suppose you built it for the Patriotic Order Sons of America because they were employees of yours, I mean how did you happen to do it for them, what was the occasion for it?—A. Well, the P. O. S. of A. members lived in those villages up there.

Q. Is that an organization then of the employees of the four companies; is that the point?—A. They belong to this organization.

Q. And what was the interest of the four mills in constructing that building?—A. Well, the P. O. S. of A. wanted a place to meet in, and we try to do what the help want, so we erected the building; we wanted a post office there to, and we had to build a building to get it.

Q. As you have indicated, that was in line with doing some-[29]thing for your help; is that your point?—A. Oh, yes; they suggested or requested that we get them a place to meet so we just put up the building and then we also wanted to have some stores, we had no stores there where people could buy food or anything, so we rented those lower floor stores for the stores for the benefit of the villagers.

Q. Do you know whether there is any other organization of employees?—A. Oh, I think we have some that belong to the Masonic Order.

Q. Do you know whether there is any other organization of employees out there?—A. As I say, I think we have some that belong to the Masonic Order. Of course, their membership is at Belmont.

Q. So far as the Village of North Belmont is concerned, the P. O. S. of A. that is, in 1937 or perhaps since then, is the only organization that any of the employees belong to, so far as you know; is that right?—A. That is the only one I have heard of.

Q. Do you know where the—was the Patriotic Order Sons of America an existing organization when you constructed the

building?—A. Oh, yes; I do not know how long it has been in existence.

* * *

[30] By Mr. GARVER:

Q. Well, were they holding meetings before the building was made available to them?—A. I don't remember.

Q. Were your arrangements with anybody in particular of that organization in connection with the use of the building?—A. Well, of course the officers of the Patriotic Sons of America at that time were the ones that had charge of the meetings there.

Q. I understand. Do I understand that they were to have what part of the building to use?—A. The second floor.

Q. Is there any equipment up there for them that you installed?—A. No; well, we installed chairs for them, that is the only thing that we installed.

Q. How is the building heated?—A. By stove.

Q. That is, stoves in the different rooms, and so on?—A. Yes.

Q. And I assume the second floor is heated by a stove?—A. Yes; I imagine so.

Q. Do I understand that you built this building for them because you wanted to have the grocery store and the post office there to facilitate the living of your employees; is that right?—[31] A. That is right.

Q. Are there any other functions that the employees can have in that meeting place?—A. Not that I know of; no.

Q. Well, so far as you are concerned, is it all right for them to use the second floor for any other function?—A. No; it was built especially for the Patriotic Order Sons of America to hold their meetings in and was not to be rented to anybody else.

Q. Do you have any objection to employees carrying on any other functions in that auditorium?—A. If they are members of the P. O. S. of A. in their regular meetings, why of course they are eligible for it.

Q. Are you a member of the Patriotic Order Sons of America?—A. No; I am not.

Q. I do not know that you made clear, and perhaps I did not ask you this; does North Belmont, as such, do the villages have any form of government of any kind?—A. No.

Q. What do they come under, just the county?—A. Just the county.

Q. How are they policed?—A. By special officer, a deputy sheriff.

Q. And who pays him?—A. He is paid by the mill companies, he works under the [32] jurisdiction of the sheriff of Gaston County.

Q. Does he also have any other authority besides his deputy sheriff's authority; is he deputized by the police of Belmont?—A. No; by the sheriff of Gaston County as a deputy sheriff.

Q. I see. You say that the four mills own that building?—A. Yes, sir.

Q. Do you know of your own knowledge what type of ownership that is, is it just a joint four-way ownership, or how is it accounted for?—A. They all own the same amount of stock, divided four ways.

Mr. WHITLOCK. They are tenants in common, the four companies are, of the properties.

By Mr. GARVER:

Q. Well, while we are on that same point, are they likewise owners of the movie theatre building, do you know that?—A. Yes; they are owners of the movie building.

Q. And they are also tenants in common of the movie theatre building, is that right?—A. That is right.

Mr. GARVER. That is all I would like to inquire of Mr. Stowe at this time.

Cross-examination by Mr. WHITLOCK:

Q. Mr. Stowe, do you know what sort of an organization this Patriotic Order Sons of America is?—A. It is a patriotic order, I understood.

[33] Q. Do you know whether it has chapters or organizations all over the country or not?—A. They do; yes, sir.

Q. They do?—A. Yes.

Mr. MASON. Off the record, Mr. Trial Examiner. Mr. Truman is coming down here to speak to them.

Mr. WHITLOCK. Yes; I know that.

By Mr. WHITLOCK:

Q. Is it a labor organization?—A. No; it is not.

By Mr. GASTON:

Q. Mr. Stowe, it is a secret society, isn't it?—A. Yes, like other——

Q. Fraternal organization?—A. Fraternal orders are; yes.

Q. To your knowledge, has that building ever been used by anyone else?—A. No.

Q. Except by this lodge?—A. No; it is not.

Q. You stated a moment ago that the membership of this Lodge——

Trial Examiner WHITTEMORE. Well, may I inquire, you mean the building or just the hall?

Mr. GASTON. The hall, I refer to the hall.

Trial Examiner WHITTEMORE. All right.

[34] By Mr. GASTON:

Q. You stated a moment ago that the membership of this Lodge came from the four mill villages. It might be farmers and other people in the country?—A. Oh, yes; they have got other members.

Q. The bulk of them come from the villages?—A. Outside of those four villages.

Mr. GARVER. I didn't quite understand that, sir.

The WITNESS. I say, they have other members that belong to the organization outside of the villages.

By Mr. GASTON:

Q. But the bulk of them are the employees of the villages?—A. I imagine so; yes.

Q. At the time this bulding was built, was it built at the request of an existing patriotic order up there?—A. Well, in addition to that, and I mean and in addition to that, they wanted a place where they could go and buy food and stuff, they had no stores in that vicinity.

Q. I believe you stated that the deputy sheriff had no connection with the City of Belmont?—A. No.

Q. And that is true, isn't it?—A. Yes.

Q. And North Belmont is not an incorporated town or city?—A. It is not.

Mr. GASTON. That is all.

* * *

[36] REDIRECT EXAMINATION

* * *

[37] Q. Did you have any direct interest in the organization, as such, I mean the patriotic organization?—A. None whatever, only just the fact that we were trying to help the people out who were members of it and did not have a place to meet in.

Q. That is, you and the companies were not interested in the Patriotic organization?—A. Well, of course we are interested in any Patriotic organization.

Q. I mean, you do not have any special interest in that, did you?—A. Well, we have always got special interest in being patriotic, whether it is a patriotic fraternal order or what not.

Q. I just wanted to know, was your interest in building the building at that time because of the organization that was organized, because it was made up of employees?

A. Well, it was both, both for the employees and the patriotic character, too.

Re-cross examination by Mr. HOLLOWELL:

Q. You act as agent or as trustee in the control of this building as a representative of these respondents in this case?—A. That is right.

* * *

[38] Q. And you are the only one who has any authority?—A. That is right.

Q. And in that respect you speak for all four mills?—A. That is correct.

* * *

[39] Q. There was no intent on the part of you——A. Oh, no.

[40] Q. As agent for these mills to discriminate against any one, any Order, was there?—A. No; but we, when we built this building we told the Patriotic Order Sons of America that we were going to let them use the building free of rent, but were not going to allow it to be rented for any purposes.

* * *

[42] BAXTER BLACK (Board witness).

* * *

Direct Examination by Mr. GARVER:

Q. Will you state your name for the record, please, sir?—A. Baxter Black.

Q. Where do you live, Mr. Black?—A. North Belmont.

Q. Mr. Black, do you live in one of the four villages that has been referred to here?—A. I live in Acme, No. 1.

Mr. WHITLOCK. Talk a little louder, please, sir.

[43] The WITNESS. Acme No. 1.

By Mr. GARVER:

Q. They are, Mr. Black, adjacent to each other, the two plants?—A. Two plants, Acme No. 1 and Acme No. 2.

Q. They are right adjacent to each other, aren't they?—A. Yes.

Q. And I take it Acme Village No. 1 and Acme Village No. 2, how is that, are they adjacent to each other?—A. Yes.

Q. How long have you worked for the Acme Spinning Company?—A. I have been there it will be 24 years.

Q. And what is your work at the present time?—A. Twister work.

Q. Were you working for the company in 1934?—A. Yes, sir.

Q. Was there some union that was organizing there that year?—A. There were.

Q. What union was it, if you know?—A. I don't remember.

Q. Do you know whether it was an A. F. of L. union?—A. I couldn't tell.

Q. Was there a strike among the employees in the other—employees of the Acme Milling Company——A. Pardon?

Q. Was there a strike among the employees of the Acme Spinning [44] Company?—A. There was.

Q. In 1934?—A. Yes.

Q. And was there a strike among the employees of the other four mills in North Belmont?—A. All four mills in North Belmont.

Q. Has there—of course, the way I understand, there has been some union activity this year, but from 1934 up to this year, has there been any union organizational activities?—A. No, sir.

Q. Sir?—A. No, sir.

Q. None in the North Belmont area from that time on; is that right?—A. From that time up to this time.

Q. Are you a member of the Patriotic Sons——A. I am.

Q. Patriotic Order Sons of America; is that right?—A. Yes.

Q. And in general, what is the purpose of that organization?—A. Well, it is just an organization that we got up, it was just like the Masons, the churches.

* * *

[46] Q. Now, how did it come about that the building was built, was the organization interested in having a building built?—A. We were interested in having a building built of our own where we could have our meetings, we wanted a building in the community for other purposes, too, where we could have meetings.

Q. Well, you say the organization became interested in having a building?—A. Yes.

Q. What did the organization do about that?—A. Well, we had to go before the mill men to get the plant, to get the building put up.

Q. Well, did you create a committee to work with the idea of having a building?—A. Yes; we appointed some for that purpose.

Q. And you say—what did the committee do, then?—A. Well, it went before the mill officials and they agreed [47] to put up the building for us.

Q. And then after that the building was built; is that right?—A. It was put up.

Q. And I take it that after the building was built, you then began to hold your meetings in the building?—A. In the building.

Q. And what part of the building would you use to hold your meetings in?—A. In the upper room; upper story.

Q. Was that the entire second floor?—A. The entire second floor.

Q. And how often did you meet in that building?—A. Once a week.

Q. Do you know what the slogan of the Patriotic Order Sons of America is?

* * *

[48] Trial Examiner WHITTEMORE. This slogan isn't anything that is secret. If it is secret it certainly would not be a slogan.

Mr. GARVER. I am reading from an ordinary library book, Mr. Examiner. The slogan of the Patriotic Order Sons of America is: "God, our country, our order"; is that right?

The WITNESS. That is right.

By Mr. GARVER:

Q. Do you occupy any particular position with the Order at the present time?—A. I am president of it.

Q. Does this local order here have some particular name that, as you and I know it, it is the Washington Camp No. 7 of the so-called Patriotic Order Sons of America; is that right?—A. That is correct.

Q. Now, who is eligible for membership in the Order?—A. Any fellow that has got a good character can join it. If [49] you wanted membership in it we will get you one in here.

Q. If I lived out there and worked in one of the mills, I probably would want to join it. Of course, it is an organization for men, is that right?—A. Yes, sir.

Q. And where do most of the men work that belong to the Order?—A. Work in the village there and the mills around, North Belmont mills.

Q. In North Belmont; is that right?—A. North Belmont, that is right.

Q. By the way, does the organization have some dues?—A. We have dues, once a month.

Q. Can you disclose how much the dues are?—A. Well, 85 cents a month.

Q. And how are the dues of the men who work in the mills collected?—A. Collected through the mills.

Q. That is, the mill has some arrangement with the Order to check off the dues?—A. That is right.

Q. And that is passed over to someone, I suppose, secretary or treasurer of the organization?—A. That is right.

Q. How was it that you wanted to get away from the school-[50] house?—A. Well, the schoolhouse was not big enough for us at the time.

Q. The membership was so great you wanted more room?—A. The membership was growing and we didn't have the room, they had chairs in the school building like they got in this court room.

Q. Why did you have to have a building?—A. Well, we had to have a building to put on our secret order work.

Q. Was there any other place in North Belmont?—A. There wasn't any other place.

Q. Do you know how big the second-floor room is?—A. Well, it is, I would say it is 40 feet wide and about 90 foot long.

Q. And what kind of chairs do you have up there?—A. Straight chairs.

Q. They are not the folding type, are they?—A. Not the folding type.

Q. And do you know about how many chairs you have up there?—A. Well, we have around 200-some-odd chairs.

Q. Do you have any equipment up there for feeding?—A. We have equipment.

Q. You have a kitchen arrangement?—A. That is right.

[51] Q. Do you have dishes and equipment of that sort?—A. Dishes, and all kinds of cooking equipment.

Q. That second floor is frequently called your "auditorium room"?—A. One large room, there is no posts in the middle of it, one large room.

Q. Very suitable for you to hold your meetings; is that right?—A. Very suitable for that purpose.

Q. Does the organization have any lease from the mill owners with respect to the use of the building?—A. The building is given to us free of charge.

Q. Is there anything in writing on it?—A. Well, I don't know that, where there are or not.

Q. As far as you know, there is nothing in writing?—A. As far as I know there isn't.

Q. You say there is some kitchen equipment there; has there ever been any dinners up there?—A. There have been dinners there.

Q. And who held dinners up there?—A. Patriotic Order Sons of America.

Q. Anyone else?—A. Well, churches around there that have banquets once in a while.

Q. Has the Central View Church ever had a——[52] A. Yes, sir——.

Q. Is that a church in North Belmont?—A. No in Belmont.

Q. Has the Baptist Church ever had a dinner up there?—A. Well, that is the one you are referring to, Central Baptist Church.

Q. What about the Presbyterian Church?—A. I won't say whether they have or not, not as I know of. I don't know.

Q. What about the Free Will Church?—A. They have had one.

Q. Free Will Church in North Belmont?—A. Yes.

Q. They have used the second floor for a dinner?—A. For a dinner.

Q. When the churches have used the second floor for having dinners, have they paid for it in any way?—A. They pay nobody at all.

Q. What about cleaning up the place; is there any arrangement made for that?—A. Well, I don't know whether there are or not, I don't think there is any arrangement made for cleaning up.

Q. Well, does the building have a janitor?—A. The building has a janitor but he don't do the cleaning up.

[53] Q. Well, who does the cleaning up, the organization?—A. The organization is supposed to do the cleaning up.

Q. Any organization that used it is supposed to do the cleaning up?—A. Has to do their own cleaning up.

Q. Now, when the churches have used the building for dinners, who have they made the arrangements with?—A. Well they make their arrangement with some of the members of the Lodge and then we take a vote on it whether we will agree for them to get the building, if we don't, they don't get it.

Q. So far as you know, has the Lodge ever refused to give them the use of the building?—A. Not in North Belmont they haven't.

Q. How long have you been president, Mr. Black?—A. Well, now, I have been president about two years, I believe.

Q. Were you ever president prior to that?—A. Yes, sir; time after time.

Q. You have repeatedly been an officer; is that right?—A. Been an officer, been all the way around the whole community.

Q. Sir?—A. I say I have been all the way around in all of the offices; I have held them all.

[54] Q. What about the so-called Ladies' Aid Society, the Ladies' Aid group; have they ever used the building up there?—A. Well, they have used it once or twice.

Q. Now, do you know anything about the Christmas party that was held last year by the school?—A. I don't remember whether they held one last year or not but I believe the year before last they did; year before last they did.

Q. Been a Christmas party held up there?—A. Yes.

Q. That is the North Belmont School I am referring to.—A. That is the North Belmont School.

Q. I take it the reason they had to use that place is because they do not have a large enough auditorium at the school?—A. Don't have a large enough auditorium at the school.

Q. Is that correct?—A. That is right.

Q. Now, do you know anything about the safety school that was held on the second floor there of the building since last spring? Or this last spring?—A. They did have one.

Q. Spring of what year was that?—A. This spring.

Q. This last spring that has just passed?—A. Yes.

[55] Q. Who was that safety school for?—A. For the employees of all the mills.

Q. Was it for the general employees or supervisors, or was it used for——A. Well, it was for the supers and spinning room boss, and section men.

Q. And about how long did that school run up there?—A. I think it went on three weeks.

Q. Have you met Mr. Harris that is sitting here?—A. I have met Mr. Harris.

Q. And you know that he is a representative of the Textile Workers Union of America?—A. I do.

Q. Did you also meet a Mr. Hurt?—A. I met Mr. Hurt; yes.

Q. You met Mr. Hurt who is also a representative of the Textile Workers Union of America?—A. I did.

Q. When did you first meet Mr. Harris?—A. Well, I first met Mr. Harris some time in January or February, but I don't remember the exact date.

Q. If I direct your attention to the fact that there was some meeting that was scheduled for January 28th, does that help you, of 1945; does that help you to fix the date?—A. That would. It was in January instead of February.

[56] Q. And what day of the week was it that you met him?—A. On Monday.

Q. What?—A. On a Monday.

Q. Was it Mr. Harris you met; is that right?—A. Mr. Harris.

Q. And tell us how you happened to meet Mr. Harris and what he said to you and what you said to him?—A. Well, Mr. Harris came to me one evening right after I got out of the mill, around about 4:00 o'clock, and told me, he first introduced himself, Mr. Harris, as the textile workers' representative, and he said his business was to see if he could get the use of the hall out there, and I told him as far as I know, that he might be able to get hold of the hall, but we would have to have a meeting first before he could get it.

Q. You mean you would have to have a meeting of the organization?—A. That is right.

Q. So far as you knew, was there any reason why they would not be entitled to have the hall?—A. Well, as far as I know of at that time, I didn't see any reason why he couldn't get the hall.

Q. Well, that was on a Monday; is that right?—A. Sir?

Q. That was on a Monday?—[57] A. Yes, it was on a Monday.

Q. What was the next thing that happened in connection with it?—A. Well, when I went back to work Tuesday morning the party that Mr. Harris had went to see come to me and told me what about what I had done about the use of the hall, and I told him I would let him know the latter part of the week whether he could get the hall or not.

Q. I don't think I quite get you. You mentioned a Mr. Stewart?—A. That is right.

Q. Did Mr. Stewart come up there in the conversation the day before when Mr. Harris saw you?—A. Yes.

Q. How did Mr. Stewart's name come in?—A. Well, he come to me and ask me whether Mr. Harris saw me or not. I told him——

Q. I don't think you follow me, Mr. Black. Go back to Monday.—A. Well, to go back to Monday——

Q. When Mr. Harris came to you, did you mention Mr. Stewart?—A. He did mention Mr. Stewart.

Q. And who is Mr. Stewart?—A. O. R. Stewart.

Q. And where does he work?—A. Works in the same part I do.

[58] Q. And is he an officer of the organization?—A. That is right.

Q. And what office does he occupy?—A. Secretary.

Q. And do I understand you to say that Mr. Harris told you that Mr. Stewart had sent him to you; is that correct?—A. That is right.

Q. That is right. Now, going to Tuesday morning, who were you talking to on Tuesday?—A. When I went in to work on Tuesday, Mr. Stewart came, come in and asked what I had done about Mr. Harris and I told him that we would let him have the hall a Sunday afternoon, and he said, "You shouldn't have done it for he ain't nothing but a Textile organizer."

Mr. WHITLOCK. Said what? I didn't get that.

The WITNESS. Said, "you shouldn't let him have it on account he was a textile workers' organizer."

By Mr. GARVER:

Q. What happened after that, did you say anything more?—A. I never said no more to him about it.

Q. And what was the next thing that you did?—A. Well, I made my report to Mr. Cauble.

Q. And who is he?—A. Superintendent of the mill.

Q. And what report did you make to Mr. Cauble?—[59] A. Well, I told him what I had done.

Q. In other words, as soon as the issue was raised you went in, you wanted to clear yourself?—A. That is right.

Q. And Mr. Cauble is the superintendent of the Acme mill where you work?—A. That is right.

Q. And you went to him?—A. Yes.

Q. And what did you tell him?—A. Well, I told him what I had done and he said "Just let that alone" until he saw the officials at Belmont.

Q. Did Mr. Cauble come back and see you again that day about it?—A. Yes.

Q. And what did he tell you when he came back?—A. He told me that Mr. Stowe would see Mr. Stewart that evening.

Q. Which Mr. Stowe are you talking about?—A. O. R. Stewart.

Q. What?—A. O. R. Stewart.

Q. Which Mr. Stowe?—A. C. P. Stowe.

Q. The same one that just testified?—[60] A. Yes, sir; the same one that just testified here.

Q. Well, that was DeLambert P. Stowe.—A. That is right.

Q. Do you know whether Mr. Stewart saw Mr. Stowe that day?—A. I presume he did.

Q. Did Mr. Stewart come back to see you again about it?—A. He come back and told me.

Q. When was that?—A. Same evening.

Q. And what did Mr. Stewart tell you?—A. He told me he would have to get ahold of Mr. Harris and tell him he couldn't get the building.

Q. And did he tell you what had happened?—A. He never told me what had happened.

Q. Well, did he tell you anything about whether he had seen Stowe?—A. He told me that Mr. Stowe had saw him and Mr. Stowe said we would have to get ahold of Mr. Harris and tell him that the building was not for him to use.

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[67] O. R. STEWART (Board witness).

* * *

Direct examination by Mr. GARVER:

Q. Will you state your name for the record, please?—A. O. R. Stewart.

Q. Where do you live, Mr. Stewart?—[68] A. In North Belmont, Acme Spinning Company, house number 32.

Q. And are you an employee of the Acme Spinning Company?—A. I am.

Q. And what is the nature of your work?—A. Second hand on the third shift.

Q. How many people do you have working under you?—A. Approximately 15 to 20.

Q. Is that of any particular department, or how is that?—A. Yes, it is in twisting, spooling, and winding department.

Q. Twisting, spooling, and winding?—A. Yes, sir.

Q. How long have you been working for the company?—A. Eighteen years.

Q. Are you a member of the Patriotic Order Sons of America?—A. I am.

Q. And I am referring to Washington Camp No. 7.—A. Yes, sir.

Q. That is the correct name?—A. Yes, sir.

* * *

[69] Q. Did you have anything to do with the committee of the organization that was making arrangements for the building?—A. I did.

Q. And tell us what the committee, you were one of the members of the committee that met with the company officials; is that right?—A. That is right.

Q. And tell us how that came about that the building was built.—A. Well, from the standpoint of the Patriotic Order Sons of America, the building of the school was not large enough for the meeting and for the degree work that we put on.

Q. Yes.—A. The company owned the property, and we offered them a proposition.

Q. You offered them a proposition?—A. Yes; we offered them a proposition if they would fix it some way for us to have the property that we would proceed to get a Government loan and build us a building, whereby they come back with a better offer that they would build the buildings themselves.

Q. You mean that you just wanted the land?—A. Yes, sir.

Q. And you were going to build the building yourselves at that point?—[70] A. We were; yes.

Q. Incidentally, what was the company's proposition; they made a better one?—A. The company's proposition was that they would build it for us because they were going to build a store building and a place to house the post office and they built the building.

Q. Was there any lease between the company or companies and the organization?—A. None at all.

Q. Do you know Mr. Harris that represents the Textile Workers Union?—A. I met him before; yes, sir.

Q. Do you recall him coming to see you in connection with the use of the building?—A. Yes, sir.

Q. About when was that?—A. He came on Monday evening, one Monday evening in January; I forgot the exact date.

Q. Well, there has been some testimony that he saw Mr. Black on a Monday.—A. Well, I imagine it was the same Monday he saw me; he came in the afternoon to see me and at that time I wasn't president of the Patriotic Order Sons of America, and I told him he would have to see the president, that I had nothing to do with the Patriotic Sons situation as to letting the [71] building out; he was referred to me, and he asked me where Mr. Black lived, and I told him, and I didn't see him any more until yesterday afternoon.

Q. Were you an officer of the Patriotic Orders Sons of America at that time?—A. I was; financial secretary.

Q. I do not understand why you sent him to Mr. Black, you have indicated because he—I didn't get it clear.—A. Well, it was because Black was the president, the man in charge of the Camp.

Q. The man in charge of the Camp?—A. The man in charge of the Camp, and it was his business to bring those things before the Order.

* * *

[72] By Mr. GARVER:

Q. Mr. Stewart, Black has testified that it was his understanding on Tuesday you met with Mr. D. P. Stowe; did you hear that testimony?—A. Yes, sir.

Q. Did you meet with Mr. D. P. Stowe?—A. I did.

Q. Where did you meet with him?—[73] A. In his office.

Q. And who else was present?—A. J. Harold Lineberger.

Q. Was there anybody else present?—A. No, sir.

Q. And tell us, did you discuss the question of the use of the building?—A. They asked me if we were overstepping our bounds and I told him that we were not, as far as I knew.

Q. Well, go ahead and tell us the whole conversation insofar as you can remember as to what was discussed.—A. Well, Mr. Stowe asked me, he says, "You know that requirement that when we built the building that the Patriotic Order Sons of America was to be housed in and to be used for them, for their meetings and meetings of that type, and if any other meeting was to be held there, that we were to make the arrangements here," and I told him that I understood that, and he asked why this had been done, and I told him that it was through a misunderstanding what Brother Black had told me that he didn't understand what the man was representing and therefore he didn't know him being a union organizer and he had told him he could use the hall at that time, and after he understood what the man was; why, he was informed then and told him to see Mr. Stowe. I don't know whether he did that or not.

Q. Well, was there any discussion particularly at that meeting [74] that Mr. Harris was to be notified or not?—A. Yes; he was to be notified.

Q. Well, what was he to be notified?—A. That he could not use the building unless he did see Mr. Stowe.

Trial Examiner WHITTEMORE. Who told you to tell him that?

The WITNESS. Mr. Stowe.

Trial Examiner WHITTEMORE. Thank you.

By Mr. GARVER:

Q. Did you thereafter talk to Mr. Black about it?—A. I told Mr. Black what Mr. Stowe told me; yes, sir.

Q. Did you tell Mr. Black that he should tell Mr. Harris to go and see Mr. Stowe?—A. I told him he was to get in touch with him and let him know how the situation was.

Q. Well, what was the situation?—A. The situation was that he could not use the building unless he made suitable arrangements with Mr. Stowe.

Q. Well, according to Mr. Black, unless I misunderstood him, he was to tell Mr. Harris that he could not use the building; isn't that right?—A. Yes, sir; that is right.

* * *

[83] Trial Examiner WHITTEMORE. Well, let me get this straight. When you first went in there, he asked you if you had in mind the understanding about it; the renting of the hall?

The WITNESS. Yes, sir.

Trial Examiner WHITTEMORE. And you told him that you had?

The WITNESS. Yes, sir.

Trial Examiner WHITTEMORE. All right. And what did he say after that?

The WITNESS. Then he asked me about this occasion, and the only way that I could tell him was that I sent him to the president.

Trial Examiner WHITTEMORE. Well, what occasion are you referring to, did you refer to some occasion?

The WITNESS. He referred to the time that fellow, very apparently was being when he referred to the time that Brother Black had given permission to use the hall and that I understood to be this thing I went in for, if that is what you want.

Trial Examiner WHITTEMORE. Well, that is what I am trying to find out.

Did you say that you knew about it?

The WITNESS. He told me that he knew about it.

Trial Examiner WHITTEMORE. Did he say where he got the information?

[84] The WITNESS. He did not tell me; no, sir.

Trial Examiner WHITTEMORE. Well, then, would you mind just stating what he told you?

The WITNESS. Well, he went ahead and spoke with respect to our agreement together, and asked me if we were going to overstep it, and I told him as far as I was concerned, we were not.

Trial Examiner WHITTEMORE. Then, did he give you any instructions?

The WITNESS. He give instructions then that we get in touch with the man, have Brother Black get in touch with him because he was the man that made the agreement, for him to get in touch with him and tell him that the building would not be available.

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[86] JOHN A. MCCARN (Board witness).

* * *

Direct examination by Mr. GARVER:

Q. What is your name, please, sir?—A. John A. McCarn.

Q. Where do you live, Mr. McCarn?—[87] A. Belmont; Stowe Spinning.

Q. You mean you live in one of the villages in North Belmont?—A. Yes, sir.

Q. Which one?—A. 65.

Q. Of the Stowe Spinning Company?—A. Yes, sir.

Q. And what is your position in the Stowe Company plant?—A. Overseer to spinning, spooling, and twisting.

Q. Spooling and spinning?—A. Yes, sir.

Q. What else?—A. Twisting and winding.

Q. Is there anybody above you in the direct management of the Stowe mill?—A. In the mill?

Q. Yes.—A. Mr. Kale.

Q. And what is his position?—A. Superintendent.

Q. He is the only one?—A. Yes, sir.

* * *

[88] By Mr. GARVER:

Q. Now, how long have you been an overseer?—A. Stowe Spinning?

Q. Yes.—A. Nine years.

Q. Were you, of course you were the overseer in February of this year right up to the present; is that right?—A. That is right.

Q. What were the shift hours of the mill in February of this year?—A. In February?

Q. In January and February.—A. The shift hours?

Q. Yes.—A. You see, we have three 8-hour shifts.

Q. And when do they begin and end?—A. Well, we did begin at 7:00 to 3:00, and 3:00 to 11:00, and 11:00 to 7:00, that was the new time.

Q. Well, in January and February they were from 7:00 to 3:00?—A. That is right.

Q. And, then in the afternoon, the second shift was from 3:00 to 11:00?—A. That is right.

Q. And then the hoot owl shift was from 11:00 to 7:00?—A. That is right.

[89] Q. Is there any particular lunch period?—A. No, sir.

Q. And when do the employees, or is that on working time is that the way it is?—A. That is right.

Q. Do you recall that you had an employee by the name of John R. Hall?—A. That is right.

Q. Do you know what shift he was working on in January?—A. He worked on the first shift.

Q. Do you know whether he had also worked on the second shift?—A. He worked some time on the second.

* * *

[95] Q. Did you have anything to do with John Hall's assignment to work as a head doffer; in other words, did he see you about it, and did that come under your direction?—A. Yes, sir.

Q. I would like for you now, if you please, sir, to tell us in your own way just how it came about that Mr. John R. Hall left the company's employ?—A. Well, I came through the room, through the spinning room one morning around 8:30 and the frames were stopped off of doffing, about 16 frames standing, and I says to the second hand, I asked him how long the frames stopped. He stated that John Hall went out and he couldn't find him, and the frames stopped, and he didn't know he was gone, and that he had started the doffers in, and at about that time I looked across the room, and I seen Mr. Hall, and I says, "I will go over and see him."

And so I went over and I asked him what was the matter with him. He said he had been home. I told him he would have to stay in there and run his job, that we couldn't have the frames all stopped, and he said he would just quit, and I told him, "All right."

And he just laid his bobbins up on the frame and he says, "No, I won't quit, I will just let you fire me."

I says, "You done quit."

[96] He says, "You can go ahead——"

Q. Well, did you mean to fire him or didn't you?—A. No, I mean to talk to him and so he says, "Well, I will just quit." So I told him "All right."

So Mr. Childers was with me and he says then, "No," he says, "I won't quit. You will fire me."

I says, "No, you did quit," and I says to Mr. Childers, "Put somebody else on his job," and I turned around and walked off and left him.

Q. Did you know where he had been while he had been away?—A. Beg your pardon?

Q. Did you know where Mr. Hall had been?—A. He said he had been home.

Q. Did he say for what purpose?—A. I just don't recall. He said he had been home.

Q. Was it unusual for the head doffer or doffers to walk out of the room?—A. Not without permission.

Q. You mean they always come to you for permission?—A. The second hand.

Q. Was there any reason why you could not have accepted Mr. Hall's change of mind about quitting?—A. Well, he said he quit, and I felt like that the way he was doing, I would be better off without him.

Q. What do you mean, you felt like what?—[97] A. He had his frames down, I felt like I would be better off without him.

Q. Well, you were short of doffers and especially head doffers, weren't you?—A. Yes, sir.

Q. And you were still willing to just take advantage of the situation and get rid of him; is that the point?—A. Well, he said he quit, and I told him "O. K."

Q. Well, could you, as overseer, when he changed his mind, just have instructed him to do his job?—A. I did instruct him.

Q. What?—A. I instructed him before he done that.

Q. When did you instruct him?—A. When I went over and talked with him.

Q. Had you ever given him any instructions about anything in connection with his work before?—A. Yes; I had, we tell a man what the job is when we put him on it.

Q. You hadn't had any trouble with him before that, had you?—A. Well, not that kind of trouble.

Q. As overseer, are you interested in keeping your employees; there has been a shortage of employees all during the war, hasn't there?—A. Yes, sir.

[98] Q. What is your practice, are you disposed to get rid of employees rather lightly, or do you try to retain them and keep them happy, if you can?—A. Well, when a man don't run his job, I figure I am better off without him.

Q. And you figured you were better off without Mr. Hall, was that the point?—A. Yes, sir.

Q. You knew, of course, that at that time he was working on both shifts, the first and second shifts, didn't you?—A. Well, he was working some on the other shift.

Q. In other words, he was an employee who was working long hours for the company; isn't that right?—A. Well, he put in some extra time.

Q. Well, is it your contention that he quit or that you discharged him?—A. He quit.

Q. So that you were being ready and willing to employ him, you would be ready and willing to employ him?—A. Beg your pardon?

Q. Are you, were you ready and willing to employ him and to continue his employment except for the fact he quit; is that your point?—A. That is right; I did not discharge him.

Q. And you would put him right back to work except for the [99] fact that he had quit; is that right?—A. I didn't fire him, he just quit.

Q. Well, he told you that he wouldn't quit; didn't he change his mind right there?—A. Yes; he changed his mind, but it was too late, he had done told me he quit.

Q. It was too late because you had decided that you would terminate his employment right then; is that right?—A. I accepted his termination.

Q. And you did that even though you were short of doffers?—A. That is right.

Q. Did word reach you in any way that Mr. Hall wanted to continue working after that day?—A. No, sir.

Q. Didn't you know that Mr. Hall and Mr. Gainey, another employee, had been to see Mr. Kale, and asked him when Mr. Hall could have his job; didn't you know that?—A. They didn't say anything to me about it.

Q. You mean he didn't say anything to you about it, who?—A. Hall.

Q. Did Mr. Kale say anything to you about it?—A. I don't recollect whether he said anything to me that day about it or not.

Q. Well, give us the best estimate as to when Mr. Kale did discuss that with you?—[100] A. Mr. Kale told me that they came in to see him. I don't recall whether he said he wanted to go back to work or not.

Q. Well, did Mr. Kale give you to understand that Mr. Gainey and Mr. Hall had been in to see him about the matter?—A. They went in and seen him, and claimed that I fired him and I told him he quit.

Q. Well, did you indicate that it was all right for Mr. Hall to come back to work?—A. Beg your pardon?

Q. Did you indicate to anybody that it was all right for Mr. Hall to come back to work?—A. I did not.

Q. Did you want him back to work?—A. I didn't want him back.

Q. In other words, I would like to get clear, did you want to get rid of him because of his work or was it just because he had quit, which was it?—A. Well, his work was not satisfactory by doing the way he was doing and he quit, holding up my production.

Q. That morning, is that your point?—A. (No response.)

Q. Have you ever had an instance where you have been able to straighten out an employee?—A. Oh, yes.

Q. You from time to time talk to employees when some little [101] problem comes up and straighten them out and get them to do their work right?—A. You do. I didn't see all of them.

Q. Was there any reason for you to believe that you could not straighten out Mr. Hall?—A. He quit.

Mr. GARVER. May the record show that the incident that the witness is testifying about occurred on February 10, 1945?

* * *

Mr. WHITLOCK. We have verified the date and will admit that it was the 10th.

By Mr. GARVER:

Q. Now, along about that time, did you also have an employee by the name of George Gainey?—A. Yes, sir.

Q. And what shift was he working on?—[102] A. Working on the first.

Q. I do not think it is very important, but I had understood that he was working on the second.—A. Well, he worked some time on both shifts, just like Hall.

Q. On both?—A. Yes.

* * *

[104] Q. And George W. Gainey and his wife, Mabel Gainey, and his daughter Emma Louise Gainey and his son Alfred Gainey, all lived together in a house of the Stowe Spinning Company?—A. That is right.

Q. That is right in the village there of North Belmont; is that right?—A. That is right.

Q. What does a spinner do?—A. She runs the spinning frame, keeps the ends up, cleans them up.

Q. What is the average number of sides that a spinner will run?—A. Nine and ten.

Q. Nine or ten?—A. Yes.

Q. When a spinner runs nine or ten sides, that constitutes a set of runs?—A. That is right.

* * *

[106] By Mr. GARVER:

Q. Will you now tell us, sir, how it was that George W. Gainey and other members of his family left the employ of the company on February 24, or thereabouts, of this year?—A. Well, the boy quit on Saturday morning. And there was another boy quit, a Gordon boy, who left the mill, he didn't

do his cleaning, and I got after him about it, his cleaning the night before, and he left on Saturday morning and the Gainey boy and the Westbrook boy, they were with him and said they would just quit, too.

I talked to Gainey and Westbrook and tried to get them not to quit.

[107] Q. Who is Westbrook?—A. A boy that we had.

Q. Is Westbrook—Gordon the one that you are talking about?—A. Gordon was the boy that he didn't do his work of cleaning up right, and I said I would let him go, and they said they would just quit, too, if I let him go.

Q. Yes; who did you let out?—A. This Gordon boy, and I told Gainey.

Q. Which Gainey?—A. The boy.

Q. Alfred?—A. Alfred, I told him "You boys got no reason to quit," I said, "You boys done your work and," I says, "it is no concern of yours at all," so they says, "We are going to quit, too, you just give us our time if you let him go."

I says, "Now, Gainey, you are in a house——

Q. Just a minute. This is Alfred Gainey?—A. Yes.

Q. Then what happened?—A. I says if you quit, that means you have to move.

Q. How old a boy is Alfred, do you know?—A. He is 18.

* * *

[108] Q. All right. So you told him, an eighteen-year-old boy, about what would happen to the house. Go ahead.—A. That is right, I says, "You quit, that means that you will have to move, all your whole family will be out of a job and you will have to move."

He says, "Well, all right, we can move," he says, "All right."

He says, "I want my time," and I says, "Just go into the office and wait until I come back," I says, "and I will give it to you."

So I went right back to my office and I wrote their time out and gave it to them all.

Q. You wrote the time out for each, for all three of the boys and gave it to them, all three of the boys?—A. Yes, sir.

Q. You are talking about Westbrook and——A. Gainey and Gordon.

Q. I see. Then what did you do with respect to Mr. George Gainey's wife and his daughter?—A. Well, I told him he could just tell his daughter, I believe he told me would come over to see me, told him he could not wait around that afternoon for me, but anyway, I told him I [109] would have to have the house, and he said, "All right."

Q. Did you send instructions to Mr. George Gainey?—A. I just told the boy—just what I told the boy to tell him.

Q. About how long had Mr. George Gainey and his wife been working there, and his brother?—A. I don't know; a year and a half or two years.

Q. Been a couple of years in February; isn't that right?—A. I just don't remember.

Q. What?—A. I just don't remember how long.

Q. All right.—A. A good little while.

Q. You say you tried to get, to keep Alfred from quitting?—A. Yes, sir.

Q. Well, how do you explain the fact that you tried to keep an 18-year-old, Alfred Gainey, from quitting, and yet you were very quick about accepting the offer of John R. Hall to quit; was there any difference in the cases?—A. Well, he quit and gave us the information he was through.

Q. Well, you needed Mr. Hall to doff, he was the head doffer?—A. Yes.

Q. And he was working on two shifts?—A. Yes.

Q. You needed him, too, didn't you?—[110] A. Yes.

Q. Did you know that Mrs. Gainey was a spinner who worked more than the average number of sides, that she was working from 10 to 16 sides?—A. Yes, sir.

Q. And yet you were willing to let her go because 18-year-old Alfred was quitting; is that right?—A. That is right.

Q. Did you have a chance to talk to Mr. George Gainey about it that day?—A. No, sir.

Q. Did you send any employee to see him directly other than what you had told Alfred?—A. I told his boy to tell him. He says all right, they would just move, they would move, he said.

Q. You did not care to discuss with the rest of the family, or anything like that?

A. Well, I went off, went to Charlotte that afternoon, I didn't get to see him.

Q. Well, I would like to understand from you and I think you will agree it is a perfectly fair question, how was it you were willing to let three employees go, Mr. Gainey who was an oiler, and taper, and Mabel Gainey who was his wife and who was operating an extra number of sides as a spinner, and Emma Louise Gainey who was doing this hand knitting job, were you willing [111] to get rid of employees that easily?

A. Yes, sir; the simple fact because some of them quit to go to another mill and work and we furnish another mill a house, to house their help, and in all one case, why we don't let the whole family go.

Q. Well, there were three that would still be working?—A. That is right, but I needed my house for doffers, and this way he would go over to some other mill and live in my house.

Q. That was Alfred, the 18-year old; is that right?—A. That is right.

Q. Well, did you tell him that he would have to move or that the whole family would have to move?—A. They would have to give the house up, they would have to move and he says "All right."

Q. What is your practice about the housing, does everybody in the family have to work if they want to keep the house?—A. In an instance like that, why you won't have the house.

Q. Have you ever had an instance where they have been several people working, let us say, husband and wife, and where the husband, either the husband or wife has quit, have you ever had instances of that before?—A. Well, it depends on what instance it is.

Q. Well, do you have any practice with respect to the number of people that have to be working for you, before you let them have the house?—[112] A. No.

Q. Number of people in the family, no set number?—A. No, sir.

Q. Do you have any houses occupied by families where only one is working for you?—A. Some cases.

Q. Do you have any families occupying your houses where only two members of the family are working for you?—A. Yes, sir.

Q. And do you have any instances where there are people occupying your houses where only three people are working for you?—A. Yes, sir.

Q. Have you had much of the turn-over of employees during the war; what has your experience been in that connection?—A. Well, it has been a good bit of turn-over.

Q. And have you had a general problem, as I understand it from what I read in the newspapers, sir, the textile mills have had a considerable problem of retaining employees?—A. That is right.

Q. Has that been the experience of your mill, too?—A. Yes, sir.

Mr. GARVER. That is all.

CROSS-EXAMINATION

* * *

[115] Q. I see. Well, how many doffers are there in the mill?—A. We have six in the spinning department on each shift.

Q. Six on each shift. And how many head doffers do you have?—A. Two.

Q. How many employees altogether in the mill?—A. Which, under my supervision?

Q. What?—A. Under my supervision?

Q. I don't understand.—A. What do you mean, under my supervision?

Q. Well, yes; put it this way——A. I think all three shifts I have about 235 employees under my supervision.

Q. Well, do they consist of—what do they consist of?—A. Spinners, doffers, twisters, twister hands, spool hands and winder hands, yarn men.

Q. Now, you were asked a question a while ago, why it was you wanted the Gainey boy to stay and did not insist on Hall's staying.—A. Well, I was short of doffers that morning.

Q. I did not finish my question.

Can you explain that any more fully than you did to the counsel's question?

Had Hall's work been satisfactory up to that time?—[116] A. Well it had been very satisfactory.

Q. Had you had any trouble with him about his work while he worked?—A. Some.

Q. To what extent?—A. Well, I found right smart tangles in the bobbins where that trash had been running up and there had been a lot of tangles made, and I didn't just know who was doing that.

Q. You were advised or convinced that it was his work that was causing it?—A. Well, I didn't know for sure whether he was causing it or not.

* * *

[118] Q. Were you more in need of doffers than you were in need of winders, spinners, and oilers?—A. Yes, sir.

Q. There was a greater shortage of doffers, was there, than there was in the others?—[119] A. Yes.

Q. And that was because doffers are usually young people and most of the young people were in the Army?—A. Yes.

Q. And there was a bottleneck there?—A. Yes.

Q. It was essential to the production of the mill to have doffers more so than it was these others; is that right?—A. Well, I had to have both.

Q. Well, I mean the need was greater for doffers?—A. Yes; we needed the doffers worse right at that time.

Q. And you wanted the house to put a doffer in, didn't you?—A. Yes, sir.

Mr. WHITLOCK. All right, that is all.

Redirect examination by Mr. GARVER:

Q. Of course, Mr. John R. Hall was not a young man, he was far above the draft age; isn't that right?—A. I don't know his draft status.

Q. Well, you know that he is far above the draft age and is not a young fellow that would be subject to the draft; is that not right?—A. I don't know his draft status.

Q. Well, the testimony here has been that there was a shortage of young doffers and John R. Hall was a man that it was pretty clear wasn't going to be drafted, isn't that right?—[120] A. I don't know.

* * *

[123] Redirect examination by Mr. GARVER:

Q. Well, as a matter of fact, the second hand and some of the other doffers do the same work, don't they?

A. Yes; second hand, he starts the doffers in, he did that [124] morning.

Q. So when they begin to do that, do you know, I suppose they did that whenever it was necessary?—A. Yes.

Q. Yes; and so for an hour actually the looms or the frames were not stopped off for any length of time?—A. I don't know just how long they were stopped, but there was a bunch of them stopped.

Q. What does the second hand normally do?—A. He is in charge of the whole room, looks after those frames, and they all work under his supervision, doffers and spinners.

Q. Aren't you familiar with the practice of doffers going out of the mill from time to time when there isn't any frame to take care of?—A. Yes; they doffer goes out.

Q. And how often during the day will it happen that the doffers have spare time?—A. Well, it depends on how the frames is running, how they are doffed.

Q. At your plant or at your mill, the frames run a certain set time; isn't that right?—A. Well?

Q. And a man can estimate how long they are to run before it is going to be necessary to doff them again; isn't that [125] right?—A. That is right.

Q. So that the doffer can very well tell that there is going to be so much time before it will be necessary for doffing them again; isn't that right?—A. That is right.

Q. And during that time, when it is not necessary to doff, it more or less permits them to go out; isn't that right?—A. The doffers go outside.

Q. Well, if Mr. Gainey was working on the first shift, or rather if Mr. Hall was working on the first shift, beginning at

7:00 o'clock, the second shift that he worked on would be ending at 11:00 o'clock at night; isn't that right?—A. That is right.

Q. So that, actually, the only off time he would have, so far as continuous amount of operating is concerned, would be the eight hours from 11:00 o'clock at night until 7:00 o'clock the following morning; is that right?—A. That is right.

Q. And during those hours he would have to get home and get some sleep and come back to the mill, is that right?—A. That is right.

Q. And in your experience, if he took an hour off in the morning to get some breakfast, that would be the only time he would have that chance?—[126] A. If he had permission, he had to have permission to go out.

Q. If he had permission to go, there would be nothing unusual in his being out an hour; is that right?—A. That is right.

* * *

[128] Redirect examination by Mr. GARVER:

Q. How long does it take to do a complete doffing job?—A. Doff one frame.

Q. How many frames does a doffer have to doff?—A. I believe he was working, looking over 44 frames at that time, or 46 frames.

Q. And how many did you say of those frames were not working when you came over?—A. About 16 frames.

Q. And rest of the 44, they were operating; is that right?—A. That is right.

Q. Sir?—A. That is right.

Q. And about what time in the morning was it that you came over and observed that?—A. It was at least 8:30 or 9:00 I imagine.

Q. So far as you know, did Mr. Hall come to work at 7:00 o'clock that morning?—A. Yes, sir.

Q. And suppose he did some doffing before he went out; is that right?—A. Yes.

Q. Of course, you realize when John Hall left that you were also losing the employment of his wife, you understood that, [129] didn't you, you knew that both he and his wife were employees, didn't you?—A. Oh, yes.

Q. And notwithstanding that you were willing to let him go under the circumstances that you have testified to?—A. Yes.

* * *

[130] By Trial Examiner WHITTEMORE:

Q. I think you have gone over it once or twice, but just why

is it that Hall is not working there at the present time? Why is it that he is not working there now?—A. Why is he not working there now?

Q. Yes.—A. Because he quit.

Q. Well, he tried to get his job back, didn't he?

Mr. GARVER. The record does show——

The WITNESS. No, sir, he didn't come to me about it.

By Trial Examiner WHITTEMORE:

Q. Well, you knew he was trying to get his job back, didn't you, when he came to you, or how you——A. I was the man to give it back to him.

Q. You know he is trying to get it back now, don't you?—A. No, sir; nobody applied to me for the job.

Trial Examiner WHITTEMORE. All right.

* * *

[131] By Mr. GARVER:

Q. When Mr. Kale told you that Mr. Hall and Mr. Gainey had been to see him in connection with Hall's job, did you indicate that it might be a good idea to have Hall come to see you, that you were—that you would straighten him out, or wanted him, or anything of that sort?—A. No, sir; I didn't say anything to him about it.

Q. If I understand your testimony correctly, you did not want Mr. Hall working there any more; is that right?—A. I didn't tell him that I didn't want him.

Q. Well, do you want him there working any more?—A. Not the way he had been doing; that was the question I answered a while ago.

Q. In other words, you didn't want him working there any more?—A. You asked me directly if I wanted him and I said "no."

Q. Well, I just wanted to be sure I understood you correctly. You meant to tell the Examiner and everybody here that you don't want Mr. Hall working there?—A. After he quit.

* * *

[145] GEORGE W. GAINEY (Board witness).

* * *

Direct examination by Mr. GARVER:

Q. Will you state your name for the record, please?—A. George W. Gainey.

* * *

By Mr. GARVER:

Q. Are you the George W. Gainey that has been referred to here today in this hearing?—A. I am.

Q. As having been employed by the Stowe Spinning Company at one time?—A. I am.

Q. And when did you first begin to work for the Stowe Spinning Company?—A. I started to work for the Stowe Spinning Company in 1943; I moved there the 4th day of February.

Q. And what kind of work did you—you say you moved, did [146] you move into a——A. No. 31.

Q. One of the company houses?—A. Yes, sir.

Q. No. 31 of the Stowe houses; is that correct?—A. That is right.

Q. And did you continue to live in that house until the time you left the employ of the company?—A. I did.

Q. And when you moved into that house, who moved in with you?—A. It was myself, Mabel Gainey, Alfred Gainey, and Emma Louise Gainey.

Q. Now, when you went to work did they all also begin to work for the company?—A. They did.

Q. That is your wife, and your daughter, and your son Alfred; is that right?—A. That is right.

Q. And what kind of work did you begin to do?—A. I went in on the first shift as a sweeper in the spooler room.

Q. And what did your wife, what kind of work did she begin to do?—A. My wife was a spinner.

[147] Q. And what about Emma Louise?—A. Winder.

Q. What about Alfred?—A. Doffer.

Q. And how long did all of you continue to work for the company, until when?—A. February 24, 1945.

Q. Did you at one time join the union involved in this case?—A. I did.

Q. And do you remember the occasion when you joined the Textile Workers Union?—A. Yes, I do.

Q. Where were you at the time?—A. On the 11th day of December Mr. Harris and Mr. Hurt of the union organizers came down and we had a little meeting.

Q. You say the 11th day of December; of what year?—A. In 1945; no, 1943.

Q. Well, just a minute; you mean in the year that has just gone by, 1944; this is 1945.—A. That was in 1944.

Q. In other words, last December?—A. Yes.

Q. Now, you say you held a little meeting; on what day of the week was it?—A. On Sunday, the 11th day of December.

[148] Q. Now, who was at this little meeting?—A. Mr. Irving Lloyd.

Q. And who was he at that time?—A. He was a twister hand at the Stowe Company.

Q. And who else?—A. Mr. Chapple, he was a sweeper at the Stowe Spinning Company.

Q. Was anybody else there?—A. Mr. Harris and Mr. Hurt.

Q. So far as you understood, who were Mr. Harris and Mr. Hurt?—A. They were union organizers.

Q. What took place, and at whose home was the meeting?—A. James B. Chitwood.

Q. And where was his home at that time?—A. In the Stowe Spinning Company.

Q. Was that one of the company houses?—A. Yes, sir.

Q. And what took place at that meeting?—A. Well, Mr. Harris brought over some books and he gave me one.

Q. You say "books," what kind of books do you mean?—A. Union books.

Q. You mean books to get members in?—A. Yes, sir.

Q. You say you got a book that day?—[149] A. I did. No. 1 book.

Q. And what is in the book?—A. Is 50 separate blanks, 25 double blanks.

Q. Well, you mean there is a blank for 25 people?—A. There are 25 blacks and 25 yellows.

Q. I see. And those are duplicates of each other; is that right?—A. Yes.

Q. In other words, a book of 25 blanks for 25 people?—A. That is right.

Q. And what were those, membership applications, or something?—A. Yes.

Q. Now, what did you do with that book?—A. I filled it out.

Q. Well, tell us exactly what you did with it.—A. Well, I taken the book on Sunday, and I went home and I got Mabel to sign it, then Louise signed it, Alfred Gainley signed it.

Q. They were all members of your family?—A. Yes; and Leslie Finch signed it.

Q. And who is Leslie Finch?—A. He is a cousin of my children, my wife's sister's boy.

Q. Where was he working at that time?—A. Stowe Spinning Company, in the card room.

Q. Well, what did you do after that day in connection with [150] the book, what did you do next?—A. Well, I taken the book and traveled around.

Q. You what?—A. I taken the book and traveled around and the ones that I would find, why, I would, they would shove me off to other members, and I would go and get them.

Q. Where did you travel around; I don't quite get you.—A. I went around stores and such like as that.

Q. Well, that is among what employees, would you sign them?—A. Well, in the mill homes.

Q. What mill?—A. The Stowe Spinning Company.

Q. And did you talk to the various employees?—A. To the what?

Q. Did you talk to the various employees?—A. Not in the mill.

Q. Well, where would you talk to them?—A. I talked to them around stores and at their homes, such as that.

Q. Now, did you fill up book No. 1 that you had?—A. I did.

Q. Did you get another book?—A. No. 7.

Q. What other book did you get, if you remember?—A. I got No. 7, and No. 10.

[151] Q. By the way, what did you do with Book 1 when you had it filled up?—A. Well, I turned all the blanks over to Mr. Harris.

Q. And where did you see Mr. Harris?—A. He would call at my home.

Q. You say you had Book 7?—A. I did.

Q. And did you fill up Book 7?—A. I did.

Q. And what happened to Book 10?—A. I filled it up.

Q. Was anybody else working with you in connection with it?—A. Painter.

Q. And was he working for the Stowe Company at that time?—A. He was; he was working in the twisting room, on the third shift.

Q. And about how long did he—is he still working there?—A. No; he is in the Army, I suppose.

Q. About when did he leave?—A. I couldn't recall the date, along about, I would say, February, about the first of February. I could not recall the exact date.

Q. You say you went to see Mr. Harris?—A. Oh, yes.

Q. Where would you see him?—[152] A. I saw him at my home and at Charlotte.

Q. Let me see, you say you saw him in Charlotte?—A. Oh, yes.

Q. You mean Charlotte, North Carolina?—A. Yes; at the union office.

Q. You saw him at the union office in Charlotte, North Carolina?—A. Yes.

Q. How far is that from where you live?—A. Twelve miles.

Q. And how would you get to Charlotte?—A. P. & N. train.

Q. And how many times,—by the way, during the days that you were talking to him, when you were signing up your cards,

how many trips did you make to Charlotte, North Carolina?—A. Oh, I made a half dozen trips.

Q. Who else would you see in the Charlotte office?—A. Well, I would see several ladies, and Mr. Fullerton, Mr. Hurt, sometimes, Mr. Harris, sometimes.

Q. Who is Mr. Fullerton?—A. He is an organizer, too—a union organizer.

Q. The same union?—A. Yes.

Q. Now, when you would go over there, when would you go to Charlotte?—[153] A. I generally went on Thursdays and Saturdays.

Q. Can you give us an idea of how many times Mr. Harris was at your home along about that time?—A. I reckon Mr. Harris called at my home a half a dozen times.

Q. And what would you talk about when you would be up to the office in Charlotte?—A. Oh, just discuss the union, ask me how I was getting along, and I said, "All right."

Q. Do you remember some meeting that took place there at Mount Holly?—A. I do.

Q. And where is Mount Holly?—A. Well, Mount Holly is a town about three miles from us, from the mill where I worked, the Stowe Spinning.

Q. When was that meeting, what day of the week was it?—A. On Sunday.

Q. Was that along about the same time that you were having these cards filled out?—A. Yes, sir; same time.

Q. And what happened, what kind of a meeting was that over at Mount Holly?—A. That was a union meeting for the American Yarn and Processing Company.

Q. You mean the textile company?—[154] A. Processing company.

Mr. MASON. American Yarn and Processing Company.

By Mr. GARVER:

Q. Is that the so-called American Yarn and Processing Company over there?—A. Yes, sir.

Q. And you had that meeting on Sunday afternoon, is that right?—A. Sure.

Q. Was there any other employee from the Stowe Company with you at that meeting that afternoon?—A. Mr. Hall.

Q. John R. Hall?—A. John R. Hall.

Q. The same man that we have just identified here a little while ago as being Mr. Hall?—A. Yes.

Q. You mentioned Mr. Fullerton, did you see him at Charlotte, the Mr. Fullerton you met at Charlotte you told us about a little while ago—remember that?—A. Yes.

Q. Was Mr. Fullerton at the Mount Holly meeting?—A. He was.

Q. And did you have occasion to talk with him that day?—A. I did, I talked with him personally.

Q. What did you talk to him about?—[155] A. I went up and introduced myself and I said, "This is Mr. Fullerton"? He says, "Yes." I says "Yes; we are organizing among the Stowe Spinning". I says, "Do you want to arrange to have a meeting over there"? "Well," he says, "All right; get in touch with Mr. Harris and Mr. Hurt and have it done right away."

Q. Of course, you had already been seeing Mr. Harris and Mr. Hurt at that time; is that right?—A. Yes.

Q. But up to that time you had not had contact with Mr. Fullerton; is that the idea?—A. That is the first time I ever saw Mr. Fullerton.

Q. Did you go to Union meeting over in Gastonia?—A. I did.

Q. Do you remember which meeting took place first, the one at Mount Holly or the one at Gastonia?—A. The one at Gastonia.

Q. And what day of the week was that?—A. On Sunday.

Q. And who was that meeting for?—A. Firestone employees.

Q. You mean the Firestone mill in Gastonia?—A. Yes.

Q. What?—[156] A. Yes, sir.

Q. Who did you go to that meeting with?—A. Mr. Hurt.

Q. Was Mr. Harris there that day?—A. Yes; he was.

Q. Now, you say that after you went to Mount Holly, when you went to Mount Holly and spoke to Mr. Fullerton, you spoke about having a meeting?—A. Yes.

Q. For whom was that meeting to be?—A. Stowe Spinning Company.

Q. Did you hear anything more about the arrangements for a meeting?—A. Yes; I did.

Q. Who did you hear from?—A. Mr. Harris.

Q. What did Mr. Harris tell you?—A. Mr. Harris come to me in person and says, "Mr. Gainey," he says, "we will get the hall," he says, "we will have a meeting Sunday the 28th," and they wrote out a pamphlet and give it out and after that he come to me and he says, "We can't get the hall, but," he says, "we will have a meeting anyhow."

Q. About how many of these duplicates of those books do you remember that you had the employees sign yourself?—[157] A. George W. Gainey on them or G. W. Gainey.

Q. That is right.—A. 75.

Q. You mean to imply that those are people that signed in your presence?—A. Yes, siree; more or less.

Q. What do you mean "more or less"?—A. Well, it could be under, it could be more.

Q. You mean more or less than 75?

* * *

By Mr. GARVER:

Q. Mr. Gainey, you testified about some leaflets that were distributed and I will direct your attention to what has been marked for identification as Board Exhibit 2, and ask you if you have ever seen anything like that and what it appears to be to you.—A. Yes; I did see it.

Q. That is what?—[158] A. This is the exhibit that was gave out.

Q. And where did you see such papers again?—A. At the mill, Stowe Spinning Company.

Q. And when were they being given out, what part of the week, so far as you know?—A. On Friday, before the 28th—that was Sunday.

Q. You mean on Friday before January 28th?—A. Yes.

Q. And who was handing them out?—A. Mr. Harris.

Mr. GARVER. I offer in evidence Board's Exhibit 2.

Trial Examiner WHITTEMORE. Does counsel have any objection?

Mr. MASON. Acme has none.

Mr. WHITLOCK. None.

Mr. GASTON. None.

Trial Examiner WHITTEMORE. It is received.

(The document heretofore marked for identification "Board's Exhibit 2," was received in evidence.)

Mr. GARVER. All right, this is 3–A and 3–B.

(The documents referred to were marked "Board's Exhibits 3–A and 3–B," for identification.)

Mr. GARVER. And 4–A and 4–B.

(The documents referred to were marked "Board's Exhibits 4–A and 4–B," for identification.)

[159] By Mr. GARVER:

Q. Mr. Gainey, I hand you what has been marked for identification as Board's Exhibits 3–A and 3–B, and ask you to look it over and tell us what that is.—A. That is an application for Mrs. John R. Hall.

Q. And is that your signature?—A. That is right.

Q. In the left hand corner?—A. That is my signature, G. W. Gainey.

Q. Are these the type of slips that were in these books you have testified about?—A. Yes.

Q. And you say one appears to be an original and the other one a kind of carbon; is that right?—A. That is right.

Q. And the yellow is the carbon?—A. That is right.

Q. Now, looking at that can you tell us or, did you—were you present at the time Mrs. Hall's name was put on there?—A. Signed it on her dining room table.

Q. You saw her sign it on the dining room table?—A. Laid the book on the dining room table and signed it, and I put my signature on the first month and 16th day.

Q. Did you put the date on that, or do you know?—A. I did.

Q. I take it then, in view of what you said, that you were [160] at the home of the Halls on that particular day; is that right?—A. In the morning, I guess it was 8:30, it might have been later.

Q. Now, I hand you what has been marked for identification as Board's Exhibit 4–A and 4–B, and ask you if you can tell us what that is.—A. John R. Hall.

Q. Well, what did you have to do with that?—A. I signed my name to it.

Q. Well, when did you sign your name to it?—A. First month and the 16th day.

Q. Well, how did Mr. Hall's name get there? And when?—A. First month and the 16th day. He put it on there.

Q. And where did you see Mr. Hall?—A. I see him out in the alley at the Stowe Spinning Company at changing time.

Q. Is that your signature in the lower left hand corner?—A. Yes, sir.

Mr. GARVER. I offer these exhibits in evidence.

* * *

Is there any objection, Mr. Whitlock?

[161] Mr. WHITLOCK. No, sir; no objection.

Trial Examiner WHITTEMORE. Mr. Gaston?

Mr. GASTON. No.

Trial Examiner WHITTEMORE. Have you an objection, Mr. Mason?

Mr. MASON. No.

Trial Examiner WHITTEMORE. Very well. Board's Exhibits 3–A and 3–B and 4–A and 4–B, are received.

(The documents heretofore marked for identification "Board's Exhibits 3–A, 3–B, 4–A, 4–B," were received in evidence.)

Mr. GARVER. 4–A and 4–B and 3–A and 3–B have been received?

Trial Examiner WHITTEMORE. Yes.

By Mr. GARVER:

Q. Now, directing your attention to the time when you signed up Mr. Hall in the union, did you make any arrangements with him about anything that he was to do?—A. Not at that present hour.

Q. Well, did you see him again after that?—A. I did. Next day, I talked to him and asked him would he take a book. He says, "Yes; I will take a book."

Q. You mean, take one of these books that you have been testifying about?—A. Union books; yes.

Q. One of these membership books?—[162] A. Yes, sir.

Q. And did you give him a book then?—A. I did.

Q. And do you know what he did with the book?—A. He signed up several employees.

Q. And did you have occasion to see him about it?—A. What about the——

Q. Would you see him when he was signing anybody up?—A. Yes, I seen him get the names.

Q. Well, he signed somebody up and then gave you the pages?—A. Yes, he did.

Q. Did those pages tear out the book, is that the way it works, or what?—A. Yes.

Q. How often would you see Mr. Hall?—A. I seen Mr. Hall every day.

Q. Well, how often did you have occasion to talk with him about this book and what was happening to the members?—A. I talked to him every day about it.

Q. Now, according to the leaflet, and what you have testified to, there was supposed to be a meeting take place on January 28, 1945, at the Patriotic Order?—A. That is right.

Q. Sons of America building?—A. That is on the 28th.

[163] Q. Did a union meeting take place there that day?—A. In front of the building; yes.

Q. But not inside that building; is that right?—A. Not inside.

Q. Took place where?—A. In front of the building, kind of in front of the Post Office.

Q. In other words, the post office is right on the ground floor of the same building; is that right?—A. Corner building; yes.

Q. Was Mr. Harris and Mr. Hurt at that meeting?—A. They was.

Q. Do you know Mr. John McCarn?—A. Yes, sir.

Q. You heard him testify here this morning?—A. I did.

Q. Do you recall some conversations you had with Mr. McCarn along about January of this year?—A. Well, yes, I do.

Q. Well, tell us where that conversation took place and what was said and where were you?—A. Well, I don't recall the date, but I was doubling that day, I was asked to work for another man on the first shift. Well, I went in——

Mr. WHITLOCK. Speak a little louder, please, sir.

[164] The WITNESS. I went in to double that day, 16 hours, and along about, I would say, 20 minutes or 15 minutes to 3:00 o'clock, I was coming from the oil house.

By Mr. GARVER:

Q. Coming from the oil house?—A. I was between the spool room and the hole in the wall, there was a hole, the oil house is down on the back side of the spool room. Well, I went down there to get my can full of oil, and I started back and got about opposite the twister room and met there Mr. McCarn and he says, "How are you?"

I says, "All right," I says, "How are you?"

We swapped words, and he says, "They tell me the union is going pretty hot around here right now."

Q. Who said that?—A. Mr. McCarn.

Q. What did he say?—A. He says, "They tell me the union is going pretty hot around here right now."

I says, "Yes, it is going along pretty good."

He says, "Well, there ain't no use of the union now, the Government sets all the prices."

I says, "Well," I says, "a good union is all right."

He says, "Yes, a good union is a good thing if it is carried out right."

He says, "Who all belongs to it?"

And I called over several, I says; "Well," he says, the [165] Georgia boy Irving, belongs to it;" that is Lloyd Irving.

Q. Is that the same one you said was at this meeting?—A. Yes.

Q. And I am talking about the meeting of December 11th—A. Yes; that same one, and he says, "Does Mr. Ramsey belong to it?"

I says, "No; he don't."

He says, "How about," I can't call his name, he mentioned a name and I says, "My and my family belongs to it, too."

And I believe that was all that was said.

Q. What was your connection with the union at that time to the best of your——

Mr. GARVER. I will withdraw that.

By Mr. GARVER:

Q. Do you remember when Mr. John R. Hall left the company's employ, I mean do you remember it in your mind?—A. I remember the date he left.

Q. I mean you remember that it took place?—A. No, I don't.

Q. Well, you remember, you know that John R. Hall left?—A. I do.

Q. Now, when did you learn about it?—A. Along about, I would say, 8:30 in the morning, I had just got up, I don't believe I had put on my shoes and was sitting by the fire at that time, and Mr. Hall came to my house and he [166] knocked at the door, and my wife went to the door. He says, "Where is Mr. Gainey?"

She says, "George, here is Mr. Hall."

I says, "Well, tell him to come in."

He come in. I says, "How are you, Mr. Hall?"

He says, "Well, they got me this morning."

I says, "They what?"

He says, "They got me this morning," he says, "get ready and go down to the mill with me."

I went down there to talk the matter of with Mr. Kale, I went in——

Q. Let me get this straight, you don't know whether that was the same day that he left, was that the same day or some days after that?—A. Same day he moved.

Q. No; I mean how long after he left there, did Mr. Hall come to see you, do you know how long it was?—A. Well, he come right on when he was laid off to my house.

Q. And then you say you went to see Mr. Kale?—A. We did, I went in, I walked in the office and he says, or I says, "How are you, Mr. Kale."

"All right, Mr. Gainey," he says; "how are you?"

Q. Was anybody with you?—A. Mr. Hall, and I says, "Mr. Kale," I says, "Mr. Hall here, one of our union members," I says, "he was laid off," and I says, [167] "I would like you to put him back to work if you will."

He says, "Well, I will look into the matter."

Mr. WHITLOCK. He said what?

The WITNESS. "I will look into the matter," and I never did hear any more from it

By Mr. GARVER:

Q. Did you tell Mr. Kale what you were doing there?—A. Yes, I did.

Q. What did you tell him?—A. I told him I was in the union there and wanted him to put Mr. Hall back to work, told him there was 50 percent or more——

Q. Told him what?—A. 50 percent or more, 50 percent union or more. He says, "Well, I don't know about the union."

Q. Now, up until what time did you continue to work there, you and your family?—A. February 24th.

Q. And tell us what happened on that day; that is, with respect to yourself.—A. Well, on the 24th day of February 1945, I went in at 3:00 o'clock, well, just a few minutes before three, and got my machine set; I seen several flags sticking up for the tape to be put on them; I got my—Mr. Ballard over there met me, he says, "Did you receive the word that Mr. McCarn sent you?"

[168] I says, "What kind of word?"

He says, "Well," he says, "your boy quit," he says, "you can't work any more," he says, "I got orders to lay you off, you and your family off," he says, "your boy quit and I have got orders to lay you off."

Q. Who told you that?—A. Mr. Ballard over there.

Q. Who is Mr. Ballard?—A. The gentleman over there.

Q. What does he do at the company?—A. He what?

Q. What is his full name, if you know?—A. He is the second boss.

Mr. MASON. Ballard is his name.

A VOICE. B-a-l-l-a-r-d.

Trial Examiner WHITTEMORE. How do you spell it?

The VOICE. B-a-l-l-a-r-d.

Trial Examiner WHITTEMORE. Thank you.

By Mr. GARVER:

Q. What is his position over there?—A. He is second boss, takes Mr. McCarn's place, when he goes off, Mr. Ballard takes it.

Mr. GARVER. I don't believe the record will show who spoke up and supplied the name of Mr. Ballard.

Trial Examiner WHITTEMORE. Just a voice, I would say.

Mr. MASON. A still small voice.

[169] By Mr. GARVER:

Q. It was J. Harold Ballard who was speaking to you?—A. "Well," I says, "Harold," I says, "Come on, let's go down to

Mabel and explain the matter to her," and Mabel, my wife, and Lula Cook was standing there, and we went down there, down the alley, and we got to them, and I says, "Well, Harold, go ahead and tell her the whole thing."

Mr. WHITLOCK. Did what?

The WITNESS. "Well, you go ahead and tell her the whole thing," I says, "tell her the whole story."

By Mr. GARVER:

Q. You say Harold told her; is that right?—A. That was Mabel, my wife. He says, "I got orders to lay you off." She says, "Well, Harold, come on up to Mr. Kale." I says, "I ain't going to quit," I says, "I am going to let you fire me," and me and him went to the office. I walked in and Mr. Kale was in the office, I walked in and I says, "Howdy, Mr. Kale——"

Q. Who went in to Mr. Kale's office now?—A. I did, me and my wife, and I says, "How are you, Mr. Kale?" I says, "Mr. Kale," I says, "me and my wife here is laid off," I says, "would you give me some information and tell me how it is?" "Oh," he says, "well, Mr. McCarn," he says, "I tell you," he says, "your boy quit, and we will have to lay you all off." [170] he says, "we have got to have the house to put more hands in." And I says, "All right," I says, "give me my time and release," and he wrote it out, he wrote the releases, and Mr. Ballard wrote the time out.

Q. And how many of you were working at that time?—A. Three; the boy, he quit that morning.

Q. By the way, did you ever work any of these double shifts?—A. Fourteen weeks one time right on a stretch.

Q. And when you worked the double shift, what hours would you be working?—A. I would go to work at 7:00 in the morning, off at 3:00 and go back at 3:00 and off at 11:00.

Q. In other words, you would work from 7:00 in the morning until 11:00 at night; is that right?—A. That is right.

Q. And when was this 14-week shift?—A. Well, an oiler quit, Jim Dover quit, and I doubled, I think the records will show, the time sheet will show 14 weeks right on a stretch.

Q. You say your wife was a spinner?—A. Yes, sir.

Q. How many sides does she handle as a spinner?—A. Mabel, for the Stowe Spinning Company, she run from 10 to 16 sides.

Q. When did you move out of your house? [171]—A. I moved out of the house on the first day of March.

* * *

[175] By Mr. GARVER:

Q. Mr. Gainey, how long have you been working in textile mills?—A. Twenty-seven years.

Mr. WHITLOCK. Did he say 27 or 47?

(Answer read.)

By Mr. GARVER:

Q. Twenty-seven?—A. Twenty-seven years.

Q. Have you ever worked in any other kind of mill?—A. No, sir; I have not.

Q. During those years, has there been any part of the time that you have been away from working in a mill?—A. One year.

Q. Do you know what year that was?—A. 1932.

Q. Where were you in that year?—A. Florence County, my old home.

Q. Working on a farm?—[176] A. That is right.

Q. That was during the depression, wasn't it?—A. Yes.

Q. What are some of the different kinds of work that you have done in the mills?—A. Well, the first work I done in the mill was in the paper room, heavy papers.

Q. What have you been doing in the last ten years?—A. Oiling and banding, and card operator.

Q. How long has your wife been working in mills?—A. My wife has been working in the mills since 1920.

Q. Since 1920?—A. Since 1920.

Q. In other words, about——A. She started to work in the mill about three years after I did.

Q. And what kind of work has she been doing, say, the last ten years?—A. Spinning.

Q. And how long has your daughter, Emma Louise, been working in the mills?—A. Since she was 18.

Q. And about how long has that been now?—A. No; since she was sixteen.

Q. Well, how many years has it been?—[177] A. Well, it has been about four years.

Q. And how old was your boy Alfred this last spring?—A. He was 18 years old.

Q. And how long has he been working in the mill?—A. He started when he was sixteen.

* * * *

CROSS-EXAMINATION

* * * *

[186] Q. All right. Now, you did have a conversation, did you not, with Mr. McCarn, on the day you were discharged?—A. Not on the day of discharge.

Q. Well, on the next day?—A. That was before I was discharged.

Q. Well, before you were discharged. Now, what was the occasion of that conversation with him?—A. Well, Mr. McCarn met me, I reckon, about twenty minutes or fifteen minutes of three o'clock. In other words, I doubled that day sixteen hours.

Q. Yes.—A. And I met Mr. McCarn between the booster head and the partition of the spinning mill.

Q. Now, was that the time you were discharged, or the day before, or the day after?—A. Oh, that was a week or two before I was discharged.

Q. All right.—A. And he said, "How are you?" And I said, "All right," I says, "How are you?"—And he says, "They tell me the union is going pretty hot around here now," and I said, "Yes," I said, "it is getting along pretty well." And he says, "Well," he says, "it is not necessary now to have [187] unions because the Government sets all the prices, wages," and he says, "who all belongs to it?" And I says, "I don't know," I says, "a good many." And he says, "Does Georgia boy Irving belong to it?" I says, "He do," and "my family."

Q. Who is Georgia boy?—A. That is Lloyd Irving. And he says, "How about Mr. Ramsey," he says, "how about Mr. Ramsey?" I says "I don't know whether he belongs to it or not, but I don't think he do." He says, "How about A. T. Barrett?"

Q. A. T. who?—A. Barrett, and I says, "I don't know whether he belongs to it or not." And he says, "Do you belong to it?" I says, "I do; me and my family."

Q. Is that all he said?—A. Yes; that is all that was said.

[195] REDIRECT EXAMINATION

* * *

[197] Q. You mentioned a Mr. Chitwood that got a few memberships; was he working there at the time that you left?—A. No; he is working at Southfort.

Q. You mean he did leave the employ of the Stowe company; is that right?—A. His wife and daughter are working, but he is working at Southfort.

Q. He was not working in the mill?—[198] A. No, sir; he was not.

Q. Up to the time that you left; was he?—A. No, sir; he was not.

Q. You say that after Chitwood left the Stowe Mill that his wife and daughter continued to work for them?—A. They did.

Q. But Mr. Chitwood went to work somewhere else?—A. Southfort on the last shift, on the third shift.

Q. Now, do you know about when it was that Mr. Chitwood left the Stowe Mill?—A. No; I don't recall the date.

Q. Well, if I suggest to you that it was about January 1 of this year, is that about right?—A. Somewhere about that; yes.

Q. Now, after Mr. Chitwood left—by the way, was he and his family living in a house of the Stowe Company?—A. Yes.

Q. And after he left working at Stowe's did the family continue to live in the house of the Stowe Company?—A. Yes; they did, and his daughter is still in his house, 531, there.

Q. Was there anybody else in the family working at the mill?—A. No, not in that house.

Q. But Mr. Chitwood went to work in another mill and his family continued to live in the house?—[199] A. Southfort; yes.

Q. Well, it is right, that the family continued to live in that house after he went to work at Southfort? What?—A. Yes, they did.

* * *

[200] ROBERT HOWARD HARRIS (Board witness).

* * * *

Direct examination by Mr. GARVER:

Q. What is your full name, sir?—A. Robert Howard Harris.

Q. Where do you live?—A. My home address is 207 Anderson Street, Charlotte, North Carolina.

Q. And do you have an office address?—A. 1011 Independence Building, Charlotte, North Carolina.

Q. And are you the Mr. Harris that has been referred to in this hearing?—A. I am.

Q. And are you connected with the Textile Workers Union of America, C. I. O.?—A. I am.

Q. And what is your position with that organization?—A. I am a representative, national representative.

Q. As a union representative, what are your duties?—A. To organize textile workers, to negotiate and to bargain collectively with the employers in the textile industry.

[201] Q. Is it your function to bargain with employers with respect to contracts working in this vicinity?—A. That is correct.

Q. And in what area do you do your organizing work?—A. Well, at the present time in the Winston area.

Q. In general, what is meant by the "Winston" area?—A. It covers the northern part of the State of North Carolina.

Q. Did you have anything to do with the organizing campaign among the employees of the Stowe Spinning Company of North Belmont?—A. I did.

Q. And about when did you come into that situation?—A. I came into the North Belmont, Stowe Spinning Company, some time about December 8th, 1944.

Q. And what happened about that time in connection—did you see any of the employees of the company at that time?—A. I did, I contacted Thomas B. Chitwood, Lloyd Irving, at Lloyd Irving's home in North Belmont.

Q. Now, did you meet with them at about that time?—A. I met with them and made arrangements for a meeting for the following Sunday week, I believe it was December the 11th.

Q. And where did you meet on December 11th?—A. At Thomas B. Chitwood's home.

Q. And who was there?—A. George W. Gainey, Thomas B. Chitwood, Lloyd Irving, J. B. [202] Hurt, the national representative of the Textile Workers Union of America, and myself.

Q. Who did you—were you in contact with principally among the employees, did you continue to work on the organizing campaign from that time onward?—A. That is correct, I did.

Q. And who were you principally in contact with as far as the employees of the Stowe Mill were concerned?—A. Mr. George W. Gainey was in charge of the group and I was contacting him at his home, and when he gathered up the applications of membership, when they were carried to him, he would carry them to our Charlotte office.

Q. Now, directing your attention to January of this year, did you have occasion to speak to Mr. Gainey about the holding of a meeting?—A. Yes; our representative from our Charlotte office, Jim Fullerton, approached me some time the latter part, about the request from the employees of Stowe to hold a meeting in North Belmont.

So I talked it over with George Gainey, Lloyd Irving, and other people in North Belmont, and they wanted a meeting as soon as possible in order that we might finish our campaign.

Q. Did you discuss with them at that time, were you yourself familiar with where a meeting might be held?—A. Well, the first time I mentioned it to them it was around, [203] I wasn't familiar, but I found that they were in favor of holding a meeting.

Q. They were what?—A. They were in accord with having a meeting, so I went and made arrangements for one.

Q. Well, did they discuss with you, did you discuss the possibility of where a meeting might be held?—A. I asked them

as to where such a meeting might be held, and they suggested the Patriotic Sons' hall, and the school house.

Q. And did you have any understanding with the employees at that time as to what you were to do or what they were to do in connection with making arrangements for the meeting, or getting a place?—A. I told them that I would attempt to find a place to meet, either in the Patriotic Sons' hall or in the school building.

Q. Now, in connection with the hall of the POS, what effort did you make to get the hall?—A. Why, the early part of the week before the meeting was scheduled for January 28th, I went to see Mr. Stewart, after talking to several of the employees there, they told me that Mr. Stewart had charge of the building, so I went to see Mr. Stewart and told him that I had been directed to him to see about the Patriotic Sons' hall for a meeting on Sunday afternoon. And he told me that he didn't know who sent me to see him, but that I would have to see Mr. Black, who was president.

[204] Q. Well, did you tell Mr. Stewart who you were?—A. I did.

Q. Tell us what you told Mr. Stewart.—A. I introduced myself and told him that I was a representative of the Textile Workers Union of America, C. I. O., and the fact we had started to organize the people of Stowe Spinning, and that they desired to meet, and that I had come to him asking to meet in the hall on Sunday afternoon at two o'clock.

Q. And what did you say he said to you, or told you?—A. He told me that he didn't know who sent me to see him, but that he was the wrong person, I would have to talk to Mr. Black, who was president of the Patriotic Order Sons of America.

Q. Did you have occasion to see Mr. Black after that?—A. The same afternoon I went to Mr. Black's home, after I inquired from Mr. Stewart as to where he lived, and he told me, and I went to see Mr. Black at his home.

Q. Tell us what conversation you had with Mr. Black.—A. I went to Mr. Black's home, introduced myself, telling him that I was a representative of the United Textile Workers Union, C. I. O., and that we had been organizing the employees of Stowe Spinning, and they desired a meeting for Sunday afternoon in order that we might complete our campaign, for 2:00 o'clock.

And I wanted to know what the chances were of getting the Patriotic Order Sons of America hall for that meeting.

Mr. Black told me that he was in charge of the hall, and [205] told me that I could get the hall for the meeting.

I asked him what the charges would be, and he said that other organizations had met in the building and only paid a dollar janitor's fees, and it was in the wintertime, and I told him that I didn't feel that that was an adequate amount of money to pay, because we would have to have—we would need a fire, and we were willing to go beyond a dollar.

Q. What did he say to you about that?—A. He told me, well, it was entirely up to me then as to what I gave over and above the dollar.

Q. All right, will you make it clear for me again, I don't quite get you; what was the understanding that you had with Mr. Black as to the use of the building for your meeting?—A. Well, I had the understanding that he thought it would be perfectly all right for us to use the building.

I made it plain to him that I would have to have a definite understanding because we were going to put out leaflets telling the employees of Stowe Spinning where the meeting was to be held, and I asked the plain words: "Is your word final?"

Mr. Black stated that his word was final, being chairman of the Lodge.

Q. And did you have any understanding with him as to seeing him again, or anything further?—A. I told him that I would be back the latter part of the week and to send me my bill.

[206] Q. Well, what was the next thing that happened, did you get your leaflets out?—A. That is correct. I did the distribution of the leaflet on Friday afternoon before the 28th, which would be the 26th of January.

Q. I hand you what is in this record as Board's Exhibit 2, and ask you if you know what that is.—A. Copy of the leaflet that was distributed at the Stowe Spinning Company plant to the employees on January 26.

Q. Well, Board Exhibit 2 is a mimeographed document. Do you know whether that same document is the same type of leaflet that was being distributed that day?—A. That is correct.

Q. Do you know yourself, if you recall, on what part of the week that this mimeographing was done?—A. It was done around Wednesday or Thursday, I am not positive as to the exact date.

Q. And where was the mimeographing done?—A. It was done in our Charlotte office, 1011 Independence Building, by another representative.

Q. Then you say the leaflets were being distributed to the employees on Friday?—A. That is correct.

Q. And did you have something to do with the distribution?—A. I was at one of the doors of the plant.

[207] Q. Was there any other representative with you that day?—A. J. B. Hurt was at the back door and I was at the front door, or rather, I went to the back and he was at the front.

Q. Did you give out your leaflets to the employees?—A. We did.

Q. What happened, anything take place?—A. Well, I had distributed about half of the leaflets there at Stowe Spinning, and some gentleman, I don't know his name, came to me and called me off to the side and asked me if I had seen Mr. Black, and I told him that I had not seen him since the first part of the week, and he said, well, he was the janitor of the hall there, and that Black wanted to see me because the hall would not be open on Sunday afternoon for the meeting.

Q. Did you continue to distribute your leaflets?

A. After discussing it with the other representatives, I finished giving out our leaflets.

Q. Even though you didn't know then exactly about whether or not the building would be available; is that right?—A. That is correct.

Q. Did you see Mr. Black after that?—A. Yes; I went to his home immediately after we finished giving out the leaflets.

Q. And tell us now what conversation you had with Mr. Black, what he said to you and what you said to him.—[208] A. I went up to Mr. Black's home and told him that I understood that he wanted to see me.

He told me "yes," that after he had granted me permission for the hall that he had been instructed through Mr. Stewart, the treasurer of the Order, that Mr. Stowe and Mr. Lineberger had called a meeting of the superintendents and themselves and that they had instructed him to tell Mr. Black that I could not get the use of the hall under no circumstances.

He did say further that the superintendents of the plants asked Mr. Stowe and Mr. Lineberger to permit me to go ahead and use the hall since he had already told me that I could use the hall, but that Mr. Stowe said that we could not use it under any circumstances.

Q. Did a meeting take place on Sunday, January 28th?—A. Yes, sir; it did.

Q. And where was that meeting held?—A. The meeting was held in front of the post office, which is in the same building as the Patriotic Sons' hall, on the sidewalk and street there.

Q. Now, going back a bit, I was asking you about the effort you made to get the hall.

Now, what efforts did you make, if any, to get any other place after you were advised that the hall would not be available, what about the school house?—A. Friday afternoon and Saturday morning, I continued to [209] try to get a place, not knowing when the weather—not knowing what the weather might bring—and I tried, I attempted to get the school house, the theatre and——

Q. Did you see anybody in connection with the school house?—A. I did.

Q. Who did you see?—A. I saw the principal, I don't recall his name at the moment.

Q. I don't know if I can recall it myself, but if I suggest it to you, was it Mr. Haynie, is that correct, does that help you any?—A. Yes, that is correct.

Q. Did you see Mr. Haynie?—A. Yes, I did.

Q. And where did you see him?—A. I saw him at his home.

Q. Do you recall——A. I beg your pardon, it was in the school building, the first time I saw him.

Q. Do you recall whether it was—what day it was?

Mr. MASON: Mr. Examiner, there has been no allegation in these charges about that, about the school house, and for the sake of time and all that, I do not see any necessity of going into that, there is no charge as to the school, it is not mill property.

Trial Examiner WHITTEMORE. I will permit it subject to [210] connection.

Mr. GARVER. Well, there are several ways in which this testimony is important, Mr. Examiner.

First, in showing the unavailability of another location for a meeting, and secondly, in connection with the fact that the School Board members are superintendents of the mills.

By Mr. GARVER:

Q. Go ahead now and tell us what the conversation with Mr. Haynie was.—A. I introduced myself and told him who I was with and the reason that I was there, and Mr. Haynie told me right off that he didn't have permission to grant me this privilege of using the school auditorium, that I would have to contact Mr. Miller, who was chairman of the Board, and he told me where I might find Mr. Miller, that he was the superintendent of the Perfection Mill.

Q. Did you go to see Mr. Miller; is that J. W. Miller, is that correct?—A. I believe that is his initials.

Q. Did you see Mr. Miller?—A. I did.

Q. Who did you say Mr. Miller was?—A. Superintendent of the Board, I am not positive.

Q. Let me get that clear, he is connected with one of the companies?—A. That is correct.

[211] Q. And what is his position with the company?—A. He is the superintendent of Perfection Mills.

Q. And what is his connection with the North Belmont School Board?—A. He is chairman of the Board, it is my understanding.

Q. And where did you see Mr. Miller?—A. Saw him at the Perfection Mill, in his office.

Q. And what did Mr. Miller tell you? Tell us your entire conversation with Mr. Miller in his office at the Perfection Mill.—A. I went into his office and introduced myself and told him who I was, and why I was there, we were wanting a meeting for Sunday afternoon, and we wanted to use the school building, the school auditorium for the meeting.

He first stated that there was a coal shortage and that they did not have a sufficient amount of coal to permit us to have a fire.

Then I told him that we would be perfectly willing to have the meeting without one.

Q. Do you remember, do you recall what the weather was like about that time?

A. Well, we didn't have any real hard cold weather last winter to amount to anything and I think those particular days it was very mild for winter.

Q. Do you recall whether you wore a coat or not when you went [212] to see Mr. Miller?—A. I wasn't wearing a top coat.

Q. In other words, you were not wearing a coat other than your normal suit; is that right?—A. That is right.

Q. All right, go ahead and tell us your conversation.—A. So Mr. Miller said, well, being that he could not say that I have the school building at the moment, so I went into discussion about the reasons why we could not have it, and he finally told me, he says, "Well," he said, "Mr. Stowe said you could not have the school building."

So I asked him in plain words who in the hell Mr. Stowe thought he was.

Q. Tell us all that was said.—A. Then after that——

Q. Tell us all that you said to him, I want to hear the whole story.—A. I told Mr. Miller at that point that he would hear more about it, and we would find out why that Mr. Stowe was running the school, too.

I told him that I had saw some of the equipment and it was labeled "North Carolina Public Schools," and that if Mr. Stowe

owned the school, and it was a private school, then the lettering should be changed on the truck to "Stowe Private School," instead of "North Carolina Public Schools," [213] because this building was not Stowe-owned, that the other people in the county paid taxes for the benefit of the community to have a school to send the children to, and for other public use.

Q. What did Mr. Miller have to say?—A. Mr. Miller asked me out of his office, and I told him, yes, that I would leave his office, but I would promise him that he would hear about this at a later date.

* * *

[216] Q. Now, there has been testimony in this record that there is a movie theatre building owned by the four mills which is practically alongside of the P. O. S. Hall. Did you make any effort to get the movie theatre building?—A. I did, I went to Belmont and contacted the manager of the theatre there, I can't recall his name at the moment.

Q. You mean the manager of the theater in Belmont is also the manager of the theatre in North Belmont?—A. In North Belmont, that is my understanding that he operates two movies there, one in Belmont and one in North Belmont.

Q. Oh, did you see the manager of the North Belmont movie, then?—A. I did, in his office in the theatre in Belmont.

Q. And did you request the use of the theatre building?—[217] A. I introduced myself, told him who I was with, and asked him for the use of the theatre for Sunday afternoon, January 28th.

Q. In other words, you saw him in Belmont before January 28; is that right?—A. That is correct, it was either on the 26th or the 27th, I am not positive.

Q. What did he tell you, that it was all right for you to use the building, or just what was the situation?—A. No; he told me that he had a lease. I am not positive whether he said it was a written lease or just a gentleman's agreement between himself and the Stowes and the Linebergers, as to who could use the theatre building, and he said that they did not permit any one on the outside to use it, any one else to use the theatre building.

Q. Any one else than whom?—A. But himself, for a moving picture.

Q. You mean it did not permit any one but the manager of the theatre or the theatre operator to have movies there, nobody else was permitted?—A. That is correct. Or that was at least my understanding from him.

* * *

[218] By Mr. GARVER:

Q. Have you had occasion to hold meetings of employees in various fraternal meeting halls?—A. We have.

Q. Had occasion to hold any meetings in any churches?—A. My experience, I have never held a meeting in a church.

Q. Have you ever made any effort to get a church?—A. I did, in North Belmont.

* * *

By Mr. GARVER:

Q. What was your experience in attempting to get church buildings in North Belmont?

Mr. MASON. Objected to.

Mr. WHITLOCK. Object to that.

Trial Examiner WHITTEMORE. No; I will permit the witness to answer.

The WITNESS. My experience was there that the Pastors of the church felt that there would be some dissension among [219] the members because the church was erected for the purpose of holding religious services, that there would be dissension amongst its membership.

By Mr. GARVER:

Q. In other words, it is possible that other things in the church might offend the religious sentiment of that congregation?—A. That is correct.

Q. So you have not been able to have any church building made available to you for meetings; is that correct?—A. No, sir.

Q. Well, that is correct, then?—A. That is correct.

* * *

[225] Redirect examination by Mr. GARVER:

Q. Is there anything further, Mr. Harris, which bears upon your effort to get the P. O. S. Hall or the school building?—A. No; I do not recall anything at the moment.

Q. Have you been able to hold a meeting indoors in North Belmont?

Mr. MASON. Objected to.

[226] Trial Examiner WHITTEMORE. No; I will permit the witness to answer.

The WITNESS. We have not, other than committee meetings.

By Mr. GARVER:

Q. I take it the committee meetings have been in homes?—A. That is correct; we held them in homes.

Q. There has been no general meeting, then, of the employees of North Belmont?—A. None other than the meeting that was held on January 28th.

Q. Out on the street.

* * *

[230] JOHN RILEY HALL (Board witness).

Direct examination by Mr. GARVER:

Q. What is your name, sir?—A. John Riley Hall.

Q. Where do you live?—A. House No. 29, Phoenix Mill Village.

Q. Phoenix Mill Village what?—A. No. 1.

Q. Earlier this year and part of last fall, were you working for the Stowe Spinning Company?—[231] A. Yes, sir.

Q. And about when did you start to work for the Stowe Spinning Company?—A. To the best of my knowledge, it was the last part of October.

Q. Of 1944?—A. '44.

Q. And did your wife also begin to work for them at that time?—A. Yes, sir.

Q. And at that time did you begin to occupy a house of the Stowe Spinning Company?—A. That is true.

Q. And what kind of—by the way, how long have you been working in textile mill work?—A. About 25 years December.

Q. And during those 25 years, has there been any particular period of time when you have been not working in the mills?—A. Three years in the Army.

Q. Three years in the Army during the First World War?—A. That is right.

Q. About how old are you at present, Mr. Hall?—A. Forty-two past.

Mr. WHITLOCK. What did he say?

Mr. GASTON. Forty-two.

[232] By Mr. GARVER:

Q. You are over 42; is that right?—A. Yes.

Q. What kind of work have you been doing in the mills the last ten years?—A. For the last past ten years I have been doffing, head doffer, second hand.

Q. Where were you second hand?—A. Algodon Mills, Bessemer City.

Q. You were section hand over there, what were you second hand over?—A. Spinning rooms.

Q. How many frames did you have working under you at that time?—A. About 20 or 25.

Q. What is some of the work that you did as section hand?—A. I was fixing frames.

Q. Did you also tell the 20 people what to do to go about their work?—A. Yes, sir.

Q. Sir?—A. Yes, sir.

Q. What kind of work were the twenty people doing?—A. Spinning and doffing.

Q. About how long have you been a doffer?—A. Practically fifteen years.

[233] Q. Now, when you came to work for the Stowe Spinning Company last year, what shift did you come to work on?—A. Second shift.

Q. And what was your work to be?—A. Doffing.

Q. And is that the kind of work you did on the second shift?—A. Yes, sir.

Q. And who did you work under as doffer on the second shift?—A. Mr. Poplin.

Q. P-o-p-l-i-n; is that right?—A. That is right.

Q. And who is over Mr. Poplin?—A. Mr. McCarn.

Q. Now, did you begin to work on the first shift after that?—A. Yes, sir.

Q. About how long after you began to work, did you begin to work on the first shift?—A. Well, to the best of my knowledge, it was along about either three or four weeks.

Q. Now, when you began to work on the first shift, does that mean that you were not still on the second shift?—A. I was working on both.

Q. Therefore, about three weeks after you went to work, you were working on both?—A. That is right.

[234] Q. How did it come about that you began to work on the first shift; what happened?—A. Well, I was asked by Mr. Childers over there to make an extra shift on the first and run that head doffing job.

Q. Well, wait a minute. When Mr. Childers asked you to do what on the first shift?—A. To make an extra shift.

Q. And did you work under Mr. Childers then on the first shift?—A. That is correct.

Q. What work did you begin at?—A. Head doffer.

Q. Well, did you get that as your permanent job?—A. Later, on I did.

Q. Well, how long did you work temporarily?—A. To the best of my knowledge it was about three days.

Q. Well, how did it come about that you began to work permanently on the first shift?—A. Mr. Childers and I was talking and he asked me to see Mr. McCarn to get me that job permanently.

Q. And did you go and see Mr. McCarn?—A. I did.

Q. Did he give you the permanent job right away or what was the understanding?—A. To the best of my knowledge, it was two or three days [235] before he told me to come in on the job directly.

Q. In other words, you asked him about it and then two or three days later he gave you a final answer?—A. That is correct.

Q. In other words, you then continued working on the first shift?—A. That is correct.

Q. What position?—A. Head doffer.

Q. And when you became the head doffer on the first shift, did you continue to work on the second shift?—A. That is correct.

Q. Now, while you were head doffer on the first shift, what was your work on the second shift?—A. Well, doffing, and keeping up.

Q. Now, on the first shift, who did you work under?—A. Mr. Childers.

Q. And who was over Mr. Childers?—A. Mr. McCarn.

Q. That is on the first shift?—A. That is right.

Q. Now, while you were working both shifts, how many days a week would you work?—A. I would work six days a week.

Q. Well, would you work six days on both shifts, or how does [236] that go?—A. That is correct.

Q. Let me understand. How—did you work on Saturday?—A. Well, every other Saturday we would work cleaning up, only make eight hours on one Saturday and on the next Saturday they would run two shifts.

Q. So there were some Saturdays that you didn't work a second shift?—A. Work a second shift.

Q. Well, that is correct, then, there were some Saturdays that you only worked one shift; is that right?—A. That is right.

Q. And that one shift would be the morning shift?—A. That is correct.

Q. And on those Saturdays, every other Saturday the second shift would not run, is that right?—A. Yes.

* * *

[237] Q. Now, when you were working on the first shift as head doffer, how many doffers worked with you?—A. Three.

Q. Did you have any trouble with your work on the second shift?—A. No, sir.

Q. Now, as head doffer on the first shift, what would your rate of pay be?—A. Fifty-one cents an hour.

Q. Now, as doffer on the second shift, what would your rate of pay be?—A. Fifty cents an hour.

Mr. WHITLOCK: How much?
The WITNESS. Fifty cents an hour.

* * *

[239] Q. I show you what is in this record as Board Exhibit 3, and ask you if you know what that is.—A. Yes, sir I do.

Q. Well, what is it?—A. That is an application for a union.

Q. Is that your signature on there?—[240] A. It is.

Q. And who got you to sign that?—A. Mr. Gainey.

Q. And it says on here, January 16, is that about the time you signed it?—A. To the best of my knowledge that is true.

Q. Where were you on the day you signed this membership application?—A. We was in the spinning room alley.

Mr. WHITLOCK. Spinning room alley?

The WITNESS. Yes, sir.

By Mr. GARVER:

Q. Now, after the day you joined the union, did you yourself get any membership cards?—A. I did.

Q. And do you remember, what is your best recollection as to when you got them?—A. About a week after I signed that paper.

Q. And who gave them to you?—A. Mr. Gainey.

Q. And what did he give you?—A. He give me a book.

Q. What?—A. A book.

Q. And what did you do with that book?—A. I talked there among the help and asked them, told them [241] that we were going to organize a union there and asked them would they be interested in signing

Q. What types of workers did you speak to?—A. Spinning and doffing.

Q. And did you have occasion to see Mr. Gainey about it?—A. Yes, sir; very often.

Q. Well, how often would you talk to Mr. Gainey about it?—A. Well, practically, we would see one another every day.

Q. And what would you talk about?—A. Well, we would ask Mr. Gainey had we got so and so to join, and I would tell him to see so and so, and he would tell me to see someone that might be interested, and such as that.

Q. And did you get anybody to sign a membership card?—A. I did; yes.

Q. What would you do with the membership applications after you got them signed?—A. Turned them back to Mr. Gainey.

Q. And what did you finally do with the book?—A. I turned it back to him.

Q. Do you remember anything about a meeting at Mount Holly?—A. I do.

Q. Did you go to some meeting at Mount Holly?—A. I did.

Q. Do you remember what day of the week it was?—A. It was a week before the 28th, on Sunday.

[242] Q. And where was that meeting?—A. In the theatre.

Q. And who was at that meeting; I mean what groups or who were there, in general; what was that meeting for?—A. That was for those mills there in Mount Holly.

Q. You mean it was for the employees of the mill?—A. Yes.

Q. And how did you go to that meeting?—A. Well, me any my family went over there; I was asked, though, first, to attend the meeting.

Q. Who asked you to attend the meeting?—A. Through Mr. Gainey, and me and my wife went over to my wife's uncle on the bus and I walked from their house back to the theatre in town.

Q. In Mount Holly?—A. That is right.

Q. Now, was anybody there—did you see Mr. Gainey there?—A. Yes, sir; I did.

Q. Was anybody there that was representing the union?—A. Yes, sir.

Q. Do you remember who it was?—A. Mr. Hurt.

Q. At Mount Holly?—A. Yes.

Q. Do you know a Mr. — did you meet a Mr. Fullerton?—[243] A. Mr. Fullerton; that is correct.

Q. Is that who was there?—A. That is the man, Fullerton.

Q. Did you have occasion to talk to Mr. Fullerton?—A. Well, not privately, just spoke a few words.

Q. And who was with you when those few words were being spoken?—A. Mr. Gainey.

Q. And what was Mr. Gainey or Mr. Fullerton talking about?—A. They was making arrangements for having a meeting to be held at the Stowe Spinning Company the following Sunday.

Q. What did Mr. Fullerton say about that?—A. He said he would take it up with Mr. Harris.

Q. I hand you what is in this record as Board Exhibit 2, and ask you if you have ever seen anything like that?—A. I have.

Q. And about when did you see it?—A. That was on Friday, the 26th, to the best of my knowledge, before the meeting was held on January 28th.

Q. Did you go to the meeting that was held on January 28?—A. I did.

Q. Where was it held?—A. It was held in front of the entrance of the Patriotic Order Sons of America.

Q. In front of the entrance?—[244]A. That is correct.

Q. Is that a kind of door there on the first floor?—A. Door entrance to the upstairs.

Q. There is a door on the first floor that opens to the stairway as it goes up into the Hall?—A. Yes.

Q. Is that correct?—A. That is correct.

Q. Do you know Mr. McCarn's son?—A. I do.

Q. Did you see him that day?—A. I did.

Q. Where did you see him?—A. He was standing on the sidewalk as I turned around, and I spoke to him.

Q. You mean where the meeting was?—A. That is correct.

Q. What did you say to him?—A. I only just spoke, just "Howdy."

Q. Just exchanged greetings?—A. That is correct.

Q. Then what did Mr. McCarn's son do?—A. Well, he walked on off.

Q. He went away; is that right?—A. Yes, sir.

[245] Q. Do you remember the date that you left work, I mean the last day that you worked?—A. I can remember the day, but I can't remember the date.

Q. I was just directing your attention to it; you remember the last day in your mind, don't you?—A. Yes, sir.

Q. You remember what happened on that day, don't you?—A. Yes, sir.

Q. All right. Now, what time did you go to work on that day?—A. Well, I come to the mill about fifteen to seven, the changing time was 7:00 o'clock.

Q. Were the other doffers all there at 7:00 o'clock?—A. They were not.

Q. Well, what was the situation?—A. We was short of doffers that morning; they were not in.

Q. Well, there were supposed to be three doffers; is that right?—A. Yes.

Q. Were all of them there?—A. No.

Q. How many were there?—A. There were two of them there?

Q. What happened to the third one, did you see him, did he finally come in or what happened?—[246] A. He finally come in and they sent him back home.

Q. Was one of them late?—A. One of them was a little late, the Finchun boy.

Q. You mean of the two that were there, one of them was late; is that right?—A. That is right.

Q. How did the one that was late get there?—A. Mr. Childers sent after him.

Q. In other words, at 7:00 o'clock there was really only one doffer?—A. That is correct, 7:00 o'clock, correct.

Q. You were the head doffer? And there was one doffer there. Correct?—A. Correct.

Q. Then Mr. Childers sent for Mr. Finchun?—A. Yes.

Q. Mr. Finchun being one of the boys, is that right?—A. Yes.

Q. And was Jack Goodson there at that time?—A. I didn't see him.

Q. Did you go to work?—A. I did.

Q. What did you do?—A. Well, I got one of those doffer's boxes and filled it up and started doffing.

[247] Q. And tell us what you did, how much work did you do?—A. We doffed eight frames.

Q. And who was working with you?—A. I can't recall that other boy's name, and Finchun finally come in before we got the eight frames doffed and began doffing.

Q. So that means when Finchun came in there were two doffers and yourself; is that right?—A. That is right.

Q. And you got the eight frames doffed; is that right?—A. That is correct.

Q. Then what happened?—A. We went home after their breakfast.

Q. How far did you live from the mill?—A. To the best of my judgment, it would be about 100 yards.

Q. And at that time were you working on a double shift?—A. That is correct.

Q. And had you worked, when you worked on the double shift, you worked what hours?—A. From 7:00 in the morning until 11:00 at night.

Q. Do you have a lunch period?—A. Well, the only time that I would have a lunch period is when I would catch up on my job and go home after my lunch.

Q. How often did you—you say you went home for breakfast on this particular day?—[248] A. That is right.

Q. How often did you go home for breakfast?—A. Every morning.

Q. And had you been doing that right along?—A. Ever since I started to work on two shifts.

Q. Mr. Childers ever tell you not to go home for breakfast?—A. No, sir.

Q. Did you ever go home for lunch?—A. Yes, sir.

Q. Did Mr. Childers ever tell you not to go home for lunch?—A. He has given me permission to go home for my lunch.

Q. You would ask him about it?—A. Yes, sir.

Q. Would you ever ask him to go home for breakfast?—A. Never did ask him about breakfast.

Q. And when you would go home for breakfast, how long would you stay home?—A. Anywheres from 30 to 45 minutes.

Q. Now, did you come back from breakfast that day?—A. I did.

Q. And did you see Jack Goodson that morning?—A. I saw him after I come back from breakfast.

Q. Had he been at work at all before you went to work?—A. I couldn't say because I didn't see him before that.

Q. Well, in other words, the first time you saw him was [249] after you got back from breakfast; is that right?—A. That is right.

Q. Am I correct, then, in understanding that Mr. Goodson had not even been to work until you got back from breakfast?—A. That is my understanding.

Q. Well, is that correct?—A. That is correct.

Q. All right. Now, when you got back from breakfast, what did you begin to do?—A. Went on picking up of the doffing.

Q. Well, who was doffing at that time?—A. Well, I think the Finehun boy and Mr. Childers were doffing.

Q. And you yourself went right in and chipped in; is that right?—A. Yes, sir.

Q. Who tells the doffers when to begin to do the work?—A. Well, the head doffer is supposed to, and the section man is also supposed to tell them.

Q. In other words, whenever it is necessary, then either you or the section hand tells the doffers to get to work; is that right?—A. Or either he tells me and I tell them, but he has authority to tell either one, me or the doffers.

Q. And who usually tells the doffers when to begin work?—A. The head doffer.

[250] Q. And has that been your custom?—A. That is correct.

Q. Well, what happened then after you—you say after you got back from breakfast, then Mr. Goodson showed up?—A. That is correct.

Q. Did he go to work?—A. I couldn't say whether he did or not.

Q. Well, did he work any more that day at all?—A. No, sir; he did not.

Q. What happened to him?—A. They sent him back home for the day.

Q. Do you know whether he came to work the next day?—A. I do not.

Q. Well, what happened then when you began to work after breakfast, what was the next thing that happened?—A. Mr. Childers come to me and told me that I would have to stay on my job and run it better.

Q. Run it better?—A. That is correct.

Q. Had he ever warned you about not doing your job right before?—A. The first, the first time that he had ever said anything to me.

Q. And what happened after that.—A. And in just a few minutes after Mr. McCarn come to me.

[251] Q. What did he say?—A. He said the same thing.

Q. Well, tell us the whole conversation.—A. He told me that I would have to stay on the job better and run it, and I told him that, and asked what was my job. I said I hadn't had a complete understanding just what my job was as head doffer at that time, and told him that I understood that they was giving me extra hours for the head doffer on the second and third shifts, and piecing up behind the doffers, that wasn't my job, and I told him before I would piece up behind the doffers any more I would quit.

Q. Is the head doffer supposed to piece up?—A. No, sir.

Q. And had you been piecing up right along?—A. Yes, sir.

Q. Go ahead, tell us the whole conversation.—A. And I got mad and the statement, as I understood, I could have misunderstood what Mr. McCarn said then——

Q. Well, what did you say?—A. I told him before I would be around piecing up behind the doffers, I would quit.

And then I could have misunderstood him because I was angry, but to the best of my knowledge, he said to me that I had something to do with signing of these applications for these unions, and my answer was, "yes," and then he said, [252] "Well, you empty my house and I will call it not running your job."

Q. Did you tell Mr. McCarn that you quit?—A. I told him before I would piece up behind the doffers I would quit.

Q. Well, what else did you tell him?—A. That was all that was said then.

Q. Well, Mr. McCarn testified that you said something about "No, I won't quit," or something like that. Was Mr. McCarn right?—A. I told him before I would piece up behind the doffers I would quit.

Q. And then what else did you say?—A. And he told me that I would remain that way, and I told him I would quit.

Mr. WHITLOCK. Repeat that.

The WITNESS. I told him I would quit before I would piece up behind the doffers, that it wasn't my job.

By Mr. GARVER:

Q. Now, did you quit work that morning?—A. I did not.

Q. Well, how do you explain that, you mean you did not quit?—A. Well, because that he told me to empty the house and I took it for granted I was discharged.

Q. McCarn tells us, he testified that after you said something about quitting, you then said, "No, I won't quit," did you tell [253] him you wouldn't quit?—A. I told him I wouldn't quit if they would keep me from piecing up, but I told him that I would quit before I would piece up behind the doffers.

Q. Behind who?—A. The doffers.

Q. Did you leave there that morning?—A. I did.

Q. Where did you go from there?—A. I went back to my home.

Q. And did you see Mr. Gainey that morning?—A. To my home and I went up to Mr. Gainey's from my home.

Q. What happened after that?—A. Me and Mr. Gainey went back to the mill, to the office of Mr. Kale, the superintendent of the mill. Mr. Gainey asked him to put me back to work and he said he would rather not until he seen Mr. McCarn.

Q. Did you see Mr. McCarn about that time?—A. And at the same time, the offices adjoin each other, there is a door between Mr. McCarn's and Mr. Kale's office, g t a glass in it, Mr. McCarn entered his office on the other side.

We asked Mr. Kale to let Mr. McCarn come in and let us talk the thing over and he said that he would rather see him first and let me know later.

Q. Did he ever let you know?—[254] A. I didn't ever hear no more from him.

Mr. GARVER. Your witness.

Cross-examination by Mr. WHITLOCK:

Q. Mr. Hall, did you ever get breakfast at home before you went to work in the morning?—A. No, sir.

Q. Did you always quit work to go to breakfast?—A. Since I went to work on the two shifts, I did.

Q. On this particular morning when you ceased working for the Stowe Mills, you stayed out about three-quarters of an hour or an hour, didn't you?—A. That is correct.

Q. And when you came back you found 16 frames standing, didn't you?—A. That isn't true.

Q. How many did you find standing?—A. None at all.

Q. They were all running?—A. That is correct, only the ones that they were doffing.

Q. Well, how many was that?—A. One frame, they only doff one frame at a time.

* * *

[258] Q. All right. Did Mr. Kale say anything about union activities when you went to see him?—A. I can't remember whether he did or not.

Q. You don't remember?—A. No, sir. Him and Mr. Gainey was doing most of the talking.

Q. Yes. And he told you that he could not tell you whether he would let you stay on or not without talking to Mr. McCarn?—A. That is correct.

Q. And you left, and that is the last you heard of it?—A. That was the last I heard from him.

Q. Yes. And you moved?—A. Well, I remained there, to the best of my knowledge, between two and three weeks before I went.

Q. Did anybody threaten to put you out?—A. No, sir; they didn't.

Q. You left when you got good and ready?—A. Well, I left when I got me another location, got me another job, and a house, I left.

* * *

[270] Mrs. PEARL CAVENDER.

* * *

Direct examination by Mr. GARVER:

Q. What is your name?—A. Pearl Cavender.

Q. Pearl, as in oyster?

Mr. WHITLOCK, C-a-v-e-n-d-e-r.

The WITNESS. Yes, sir.

Mr. WHITLOCK. All right.

By Mr. GARVER:

Q. And where do you work?—A. At the Stowe Mill.

* * *

[272] Q. How long have you been working there?—A. Around nine or ten years.

Q. And what kind of work do you do?—A. Spinning.

Q. And who do you work under?—A. John McCarn.

* * *

Q. Mrs. Cavender, do you know Mr. John Hall?—A. I just know him as a hand that worked in where I did.

Q. Did you know him when you saw him?—A. Yes, I know him.

Q. And what shift did you work on as a spinner?—A. First shift, morning shift.

Q. And how far away from where you worked—does he ever work on any of the frames that you spin on, how is that?—A. He did.

Q. When he was working there, did he sometimes work the same place where you were, you would be working; is that right?—A. Yes.

Q. Did you ever join the union?—[273] A. No.

Q. Did anybody ever ask you to join?—A. Yes.

Q. Who did?—A. Mr. Hall and Mr. Gainey.

Q. And where were you at the time Mr. Hall asked you to join the union?—A. I was working in there, spinning, working.

Q. Were there any other spinners working at the time?—A. I guess they was all working.

Q. Did you see Mr. Hall speak to any of the other spinners from time to time?—A. Oh, yes; yes, sir.

Q. Do you know whether he spoke to the other spinners about the union?—A. I couldn't say.

Q. Well, did you ever find out about that?—A. Yes; I had several of the hands tell me about that.

Q. What did they tell you?—A. They just said "Mr. Hall wanted me to join the union."

Q. Did they tell you—what?—A. Talked the union to them.

Q. And the other spinners and you discussed that together?—A. Yes.

Q. And you had a conversation with Mr. McCarn about the union [274] in some way?—A. Only one, he just come down there one day and he just said, "Well, how is your union getting along?" I said, "I don't know, I don't belong."

Q. He said what?—A. He says, "How is your union getting along?" I said, "I don't know, I don't belong."

Q. Now, did you ever have any conversation with Mr. McCarn in which Mr. Hall's name came up?—A. Yes, one morning; it was after Mr. Hall left, though, that they were talking about the union, and he was looking over the job, I imagine.

Q. Who was looking over the job?—A. Mr. McCarn, and he said, something was said, I don't remember just what was said about it then; and I said, "Mr. Hall has left, has he?" And he says: "Left, and I think he was signing up, a union organizer." That is all that was said about signing up for the union.

Mr. WHITLOCK. Said what?

The WITNESS. About signing up for the union.

By Mr. GARVER:

Q. Who said that?—A. Mr. McCarn.

Q. Mr. McCarn said that; what did he say?—A. He said, "I think he was signing them up for the union, [275] anyway, wasn't he? And I said, "I don't know."

Q. What was Mr. McCarn doing where you were that day?—A. He was putting up ends.

Q. Putting up ends? Is that known as putting up ends, or what is that?—A. No, putting up ends that hang down.

Q. And were all the frames that you had, had they been doffed, or just what was the situation?—A. They were doffing some of them then.

Q. Were some of them stopped off?—A. There was some standing, the doffers had not gotten to them as yet.

Q. Some of the frames were standing idle?—A. Yes.

Q. What?—A. Yes.

Q. In other words, it was necessary for them to be doffed; is that right?—A. Yes. But they just hadn't gotten to them yet.

* * *

[280] Redirect examination by Mr. GARVER:

Q. Just this conversation that you had with Mr. McCarn in which he asked you how you and the union were getting along; did that take place while Mr. Hall was still working there?—A. Yes.

Q. And after that conversation did you tell Mr. Hall what Mr. McCarn had asked you; I mean did you ever go to Mr. Hall while he was still working there and tell him about Mr. McCarn having spoken to you?—A. Yes, I did.

Q. And where was Mr. Hall at the time you told him about Mr. McCarn?—[281] A. He was fixing up, he was piecing up, talking about the——

Q. Yes?—A. He was piecing up, talking about signing up the union.

Q. What did you tell him?—A. I says McCarn asked me a while ago about me, about how me and the union was getting along.

* * *

Redirect examination by Mr. GARVER:

Q. Do you know how long it was after Mr. Hall left that Mr. McCarn and you had that conversation about Hall?—A. Do I know how long?

Q. How long after Mr. Hall left was that conversation that you had with Mr. McCarn about Hall's not being there, if you know?—A. I don't know.

[282] Q. Was it shortly after?—A. It was.

Q. What?—A. I don't know.

Q. Well, was it a week or days, or what was it?—A. It could have been a week, but I don't know.

• • •

[283] Mr. GARVER. I would like to offer to stipulate concerning the hours of work for which Mr. John R. Hall was credited on the company's records while he was in the employ of the Stowe Spinning Company, and I would like also to request, if I may, that the reporter in making these entries in the record spell out the number of hours alphabetically; that is, if it is 40 a week, I would like for him to spell it "forty" so that there may not be any error.

Mr. WHITLOCK. Put it both ways if you want to.

Mr. GARVER. I offer to stipulate that John R. Hall went to work for the company on October 9, 1944, and that for the week ending October 14 he was credited with thirty-two hours (32);

Week ending October 21, forty hours (40);

Week ending October 28, forty hours (40);

Week ending November 4, forty hours (40);

Week ending November 11, sixty-two hours (62);

[284] Week ending November 18, sixty-four hours (64);

Week ending November 25, eighty-seven hours (87);

Week ending December 2, forty hours (40);

Week ending December 9, ninety-six hours (96);

Week ending December 16, eighty-four hours (84);

Week ending December 23, eighty hours (80);

Week ending December 30, thirty-nine and one-half hours (39½);

Week ending January 6, ninety-six hours (96);

Week ending January 13, eighty-seven hours (87);

Week ending January 20, ninety-six hours (96);

Week ending January 27, eighty-six hours (86);

Week ending February 3, ninety-six hours (96);

Week ending February 10, eighteen hours (18).

I don't know if the February 10th is a week ending, at least it is up to February 10, because that is the date of the discharge.

May the record show that stipulation?

Mr. WHITLOCK. Yes, sir.

Mr. GARVER. Now, with respect to Mr. George W. Gainey, I am offering only, for convenience and simplicity, only the record with respect to from January 1st, 1945, right up until the time he left.

For George W. Gainey:

Week ending January 6, forty-eight hours (48);

[285] Week ending January 13, sixty-four hours (64);
Week ending January 20, forty-eight hours (48);
Week ending January 27, forty-five hours (45);
Week ending February 3, forty-eight hours (48);
Week ending February 10, forty hours (40);
Week ending February 17, sixty-four hours (64);
Week ending February 24, forty hours (40).

May the record show that stipulation with respect to the hours credited to George W. Gainey.

Mr. WHITLOCK. It may.

Trial Examiner WHITTEMORE. Very well; thank you.

* * *

[286] Mr. GARVER. The Board rests.

Trial Examiner WHITTEMORE. Very well.

* * *

Mr. WHITLOCK. If Your Honor please, I do not know whether it is a proper motion or whether it is time to make the motion, but by analogy to procedure in a regular court of justice, I move to dismiss the charge as it refers to the alleged refusal of the mills to permit the use of the building; that is, the Hall, for the union, on the ground that the evidence is not sufficient to sustain that charge.

Trial Examiner WHITTEMORE. The motion is denied. You have the privilege, of course, of renewing that motion.

Mr. WHITLOCK. How is that?

Trial Examiner WHITTEMORE. I say, you may have the privilege of renewing that motion if you wish after you put in some evidence on the subject.

Mr. WHITLOCK. I make that motion in behalf of all four of the mills.

Trial Examiner WHITTEMORE. Very well; the ruling will stand.

You did state, did you not, that Mr. Stowe who was a [287] witness on the stand yesterday, acts as agent for all four companies in the matter of that particular building?

Mr. WHITLOCK. Yes, sir.

* * *

[290] C. W. KALE (Company witness).

* * *

Direct examination by Mr. WHITLOCK:

Q. Mr. Kale, are you connected with Stowe Spinning Company, and if so, in what capacity?—A. Superintendent.

* * *

[292] Q. * * * Did John Hall and George W. Gainey go to see you at your office on or about February 10, 1945?—A. Yes, sir.

Q. And what did they say to you and what did you say to them?—A. They said Mr. Hall had been laid off and said he went out to breakfast and Mr. Gainey elaborated on the fact that he was a good hand, been doing double duty, and did not think that they should have laid him off, and Hall said that others boys that went to breakfast that morning, some of the boys [293] had been let go and I asked who, and he said, a Goodson boy and Finchun boy, and I asked what Hall he was, we had quite a few Halls in Belmont. He said he wasn't any relation to them, he said he worked in South Gastonia most of the time and had come to the Stowe Spinning Company from Hickory, North Carolina. So we talked right much of a visit. I told him I would look into the case. At that time there had not been anything said about any union activity and affiliation of any sort, and so when he left, then he said, McCarn had told him he was laying him off on account of union activities. Mr. Gainey never did say anything about being connected with the union in any way to me. Mr. McCarn then came in his office and he said he would like to call him in there and discuss it with him. I told him I didn't think that would be advisable, I thought it would cause an argument, he seemed to be rather angry at the time, but left in very good spirits.

Q. Did you discuss it with Mr. McCarn?—A. Yes, sir.

Q. Did he tell you why he had quit or whether or not he quit or had been fired?—A. He said he was absent from his job, he left, that no one knew where he was, his frames were standing and he was losing production.

Mr. GARVER. Excuse me, I don't follow, who is being [294] quoted now?

The WITNESS. McCarn.

Mr. WHITLOCK. McCarn.

Mr. GARVER. I see.

The WITNESS. John McCarn. I also discussed it with Floyd Childers, the second hand. He said, they both said, he was absent without permission and his frames were standing, and when they reprimanded him about it he got mad and said he quit. And on second thought, why, he said he wouldn't quit. They told him that he had already quit. That being the case, why, I didn't send for Mr. Hall to come back, but I asked them if they knew his frames were standing, and they said they did. I asked them how many. They said "16 frames."

By Mr. WHITLOCK:

Q. Did he say how long the frames had been standing?—A. No; they did not give any time.

* * *

[299] By Mr. Whitlock:

Q. What was your policy with reference to allowing people to occupy your houses who did not work at your mill or who worked at other mills?—A. We expect and require the folks that live in our houses to work in our plant.

Q. Yes. But in this case three of those who were in the house were still working in the plant after the boy quit?—A. That is right.

Q. Now, why did you ask the four of them to vacate the house when only one had quit?—A. Well, we was in need of doffers worse than any other help at that time, and his overseer said he had to have this house to put a doffer in.

Q. This boy was a doffer?—A. That is right.

* * *

[307] CROSS-EXAMINATION

* * *

[308] Q. Is the maintenance of a labor supply something that you are interested in as superintendent?—A. Very much so.

Q. Is it unusual in the mill to ever have a little difficulty with employees and straighten them out?—A. Oh, no, sir.

[309] Q. How often do you have little personal problems?—A. Well, we have them rather often and regular.

Q. Is it unusual for anybody in the mill to quit?—A. No, sir.

Q. Do you ever have occasion when somebody quits, wants to quit, and you talk to them as superintendent and straighten them out?—A. No.

Q. What?—A. Very often, if their work is satisfactory.

Q. When you learn that somebody is quitting, have you ever had occasion to call anybody in and talk to them about it, find out what the trouble is and straighten them out; did you ever do that?—A. Yes, sir.

Q. What?—A. Yes, sir.

Q. Does that happen very often?—A. Quite often.

* * *

[312] Re-cross examination by Mr. GARVER:

Q. Mr. Kane, did it occur to you that you might have let the family live on in the house and you could have called in Mr. Gainey and said, "Now, look here, Mr. Gainey, your boy

is quitting, you know; we want you to work here, and let's see if we can't get this thing straightened out, or else we might have to have that house after a while"?—A. Mr. McCarn tells me that he sent word for Mr. Gainey to [313] come over but he didn't come, and these two children of Mr. Gainey's had applied for releases twice before. The family had been reported as quitting once before, and went back to work, so I didn't know whether it was good policy to try it again or not.

Q. To try what again?—A. To straighten them out and put them back to work.

Q. Well, there was nothing to straighten out if they were all working?—A. The boy had quit the mill.

Q. All right; you did lay off the other three when the boy quit?—A. Yes.

Q. But you didn't lay the other three off when the boy quit the other time?—A. (No response.)

Q. Is that right?—A. That is right.

Q. So there was nothing to get straightened out there, to get the boy straightened out; isn't that right?—A. That would have been the view.

Q. And the only effort you made to get the boy straightened out was to lay off the three?—A. Talk to the boy and lay off the family.

Mr. GARVER. That is all.

[314] Trial Examiner WHITTEMORE. Anything further?

Mr. WHITLOCK. Nothing further.

By Trial Examiner WHITTEMORE:

Q. Do I understand you to say that it was a policy to move the families out if the youngster quit his job?—A. Any member of the family quit; yes, sir.

Q. Well, this same boy quit in June 1944, didn't he?—A. Yes, sir.

Q. And you didn't move the family out then, did you?—A. No, sir. He quit to go into the service.

Q. Whether he quit or not, you didn't move the family out whether he quit to go into the service or anywhere else.—A. Well, we didn't ask any one for their house if the folks that were in the service had quit and——

Q. And you gave him a release in June 1944?—A. No; I did not give him a release.

Q. Well, the company did, didn't they?—A. The United States Employment Service, I understand.

Q. He was released and you knew he had been released?—A. No; I didn't know until told by Mr. Gainey in person. There were several boys that passed at the same time he was declined for the Merchant Marine.

Q. Can you cite another instance where there were four members of the family working for you and one of them quit to go into the services and you removed all the rest of them out [315] of the house?—A. Oh, yes; we have done that a number of times.

Q. Well, can you cite an instance?—A. I do remember of one family, there were five in it, and they, I understand they laid them off because one of them quit.

Q. Do you know the fact that they did?—A. That is what they reported to me, we have a number of them.

Q. Well, how many of them in that family had quit?—A. They said there was one quit and the others were not making very good time.

Q. Well, they were let go because the others were not making good time, were they?—A. That is right.

Q. They were not let go simply because one member of the family had quit. Now, can you cite any other instances similar to this one of the Gaineys?—A. Where there were four?

Q. Yes.—A. I could not right off, but I could check.

Q. You did not have any complaint about any of the work of the Gainey's did you?—A. I do not recall.

Q. Had any report been brought to you by the overseer or second hand?—[316] A. There had been some reports, complaining about the young girl, that she was rather young, we had that with some of the children, and the boy, there had been some talk of his work.

Q. There was no complaint about Mr. Gainey's work, was there?—A. No, sir.

Q. Or his wife's work?—A. No, sir.

Q. Now, had you received any complaint about Hall's work?—A. Yes; I had.

Q. When?—A. His overseer said that he had cautioned them about so much tangled work.

Q. Well, when had your overseer reported that to you?—A. Oh, it had been, I would say, two weeks or a week, ten days or two weeks.

Q. What did he say to you?—A. He had told him that he was making too much tangled work, said someone had been tampering with the traverses, and it was on Mr. Hall's job, and that if he hadn't been doing it, why he hadn't kept it from being done.

Q. Who reported that to you?—A. The overseer.

Q. What overseer?—A. Mr. John McCarn and Harold Ballard.

[317] Q. Had they both come to you at the same time?—A. No; not at the same time, but I had said something to them about that kind of work.

Q. You were the one that spoke to them?—A. Yes; they were making too many seconds or pieces for that kind of work and I was trying to place the cause. I just asked them if they noticed they were making more of them and what they were doing.

Q. Well, now, let me get this straight so that I can understand this, Mr. Kale: You first noticed that there was something the matter in this department, is that it?—A. That is right.

Q. And you went to McCarn and this other overseer, Ballard, this overseer?—A. Yes.

Q. And asked them about what the cause of the trouble was?—A. That is right.

Q. And what did they tell you. First, what did Mr. McCarn tell you?—A. He said someone was tampering with the traverses.

Q. He said someone was tampering with the traverses?—A. The traverses of the spinners.

Q. Tampering with the traverses of the spinners. Did he tell you who it was?—A. He said it was on Hall's job.

[318] Q. Did he say Hall was tampering with the traverses?—A. He said that he thought he was.

Q. Did he say that he knew he was?—A. No.

Q. Did you talk with Hall after that?—A. No, sir.

Q. Did you ever ask Hall who was tampering with the traverses?—A. No.

Q. You were doing war work?—A. Yes.

Q. Assuming that you were doing war work, the tampering with the traverses would be by way of sabotage, would it not?—A. Yes; it would.

Q. And at the same time you handled most of your problems, I assume, with the overseer or second hand; what did you tell them to do about it?—A. I told him to endeavor to stop it.

Q. Did he report back to you?—A. I don't recall any report about it.

Q. All right, now, what did you say to Ballard?—A. Oh, much the same thing. Ballard said it was Hall's work.

Q. Was Ballard over Hall?—A. Yes; a few hours. This man, Mr. Ballard, goes to work—went to work from 3:00 to—from 7:00 to 7:00 and Mr. McCarn 7:00 [319] in the morning to 7:00 in the afternoon.

Q. Mr. Ballard told you that Mr. Hall was doing this?—A. He said he was sure or practically sure, he said he seen him.

Q. Well, what did you tell Ballard to do about that?—A. I told him to stop it.

Q. Did you call Hall in to see you?—A. No, sir; I did not.

Q. When Ballard had told you that he had seen Hall?—A. It was his duty to handle the situation.

Q. Well, isn't it something that was of interest to you, how long before Hall left did Ballard tell you this?—A. Oh, I would say it was a week, ten days to two weeks.

Q. Did you find that Hall was tampering with the traverses?—A. I knew somebody was, I didn't know Hall was doing it.

Q. Well, did that stop after you spoke to Ballard?—A. Yes, it stopped, they kept it under control.

Q. Well, then, for a week or ten days before Hall was let go, you had no further trouble; is that it?—A. Not—no, sir—in regard to it.

Q. And you never found out who was responsible for tampering with the work?—A. I have confidence enough in my overseers to believe that they would look out for that and take care of it.

Q. What do you mean, did he report, you said a moment ago [320] he didn't report back. Did Ballard report back to you?—A. I said I had enough confidence in the overseers to believe that they would take care of the situation.

Q. Did you have a doffer, a head doffer to put on Hall's job when he left that morning?—A. They switch their doffers from time to time. I do not recall any particular boy that was elected for the job.

Q. Well, when any one was selected to do Hall's job, he was head doffer on the first shift, was he not?—A. Yes, sir; we have two head doffers in that department, two on each shift.

Q. Did you have a doffer who had applied for employment and was waiting to be called in when young Gainey quit on the morning of the 24th?—A. No, sir.

* * *

[325] Re-cross-examination by Mr. GARVER:

Q. Who did you say moved into the Gainey's house?—A. Treece.

Q. And who—how many people moved in, if you know?—A. Four.

Q. And who did that consist of?—A. A doffer and three spinners.

Q. I mean, was it Mr. Treece and Mrs. Treece?—[326] A. It was the family of Treeces.

Q. Well, was Mr. Treece working in the mill?—A. I don't think Mr. Treece worked there.

Q. But he moved in; is that right?—A. He did, Mrs. Treece worked in the mill. It was the young folks that worked in the mill.

Q. I see.—A. Sometimes the folks at the mill, the parents are not even trained to work in the mill.

Q. Well, do you know whether the young folks consisted of two daughters and a son and a daughter-in-law?—A. I think that is right.

Q. And what did the two daughters do?—A. They spun.

Q. Do you know how many sides they spun?—A. No; I don't know, I can get that if you want it.

Q. Do you know what type of work the daughter-in-law did?—A. Never heard any complaint about it.

Q. I mean, were they spinners, was the daughter-in-law a spinner?—A. Yes.

Q. Did you know that one of the three was a learner and not a spinner?—A. I did not.

Q. How long did the son and the daughter-in-law continue to [327] live in the house?—A. I don't remember.

Q. Well, they aren't working for you at the present time, are they?—A. No; they are not.

Q. And isn't it correct that they moved out after a couple of weeks?—A. Well, not to my knowledge.

Q. What?—A. Not to my knowledge.

Q. Well, don't you know that they went over and moved into the house formerly occupied by the Chitwoods that did give them additional rooms later? In other words, those that worked that moved into the Gainey house, the son who was the doffer did not continue to live in the house but went to live with his wife in the house formerly occupied by the Chitwoods, isn't that right?—A. I don't know, I don't recall that.

Q. Now, it is in this record that Mr. Chitwood left the employ of the company on about January 1, 1945. Does that conform with your recollection?—A. Yes, sir.

Q. And how many Chitwoods worked in the Chitwood family, worked with the company?—A. Three.

[328] Q. And who would that consist of, Mr. Chitwood and his wife?—A. And daughter.

Q. Now, after Mr. Chitwood left the employ of the company, do you know whether or not his wife and daughter were told, were laid off?—A. No; they were not.

Q. They were not laid off?—A. Not at that time, no.

Q. Well, not on the day that Mr. Chitwood left, is that correct?—A. Well, Mr. Chitwood was in to see me and I talked

to his overseer about him. I told him to work on, I tried to get him to not quit, and his overseer told me he was going to work on. I did not know the man had quit.

Q. Well,——A. Until the next morning when we would be due to lay his folks off, they reported for work, but his overseer thought Mr. Chitwood was just out that day and would be back later.

Q. Was there any special check made to find out?—A. Not to my knowledge.

Q. In other words, then, in that instance, Mr. Chitwood did quit and his wife and daughter were not laid off?—A. No.

Q. At the same time; is that correct?—A. Mr. McCarn said they would vacate their house, but they [329] would like permission to work until they could get a house, and they did live there for some time.

Q. In other words, they were permitted to work even though they might—they were permitted to continue to work and to temporarily live in the house, is that right?—A. That is what you get into when you permit them to work. That is one reason you usually lay them off, they won't vacate the house if you permit them to work on.

Q. Do you know how long they continued to work after Mr. Chitwood had left, was it several weeks at least?—A. Yes; it was several weeks.

* * *

Trial Examiner WHITTEMORE. I have just one question at this point.

By Trial Examiner WHITTEMORE:

Q. Was there any reason why you did not suggest to the Gaineys that they look around for some other place to live and continue to work there?—A. Sir?

Q. Was there any reason why you didn't ask the Gaineys to [330] look around and find some other place to live and continue to work there?—A. No, sir; Mr. Gainey was very angry, I couldn't do very much with him, and I tried to quiet him down, but I didn't suggest that he look for something.

Mr. GARVER. May I interpose, Mr. Examiner?

Trial Examiner WHITTEMORE. Yes, surely.

By Mr. GARVER:

Q. The decision to lay-off the Gaineys was made before Mr. Gainey came in to see you; isn't that correct?—A. That is right.

* * *

[361] Mr. GARVER. Mr. Examiner, line with the suggestion of Mr. Mason and the other counsel for the Respondents, we have, off-the-record, come to some understanding as to a stipulation with respect to the ownership of the land on which the various buildings which have been testified about in this matter are located, or rather, with respect to the ownership of such lands.

With respect to the land on which the P. O. S. building is located, it is stipulated that such land was transferred by deed dated March 31, 1930, from Thomas W. Springs and wife, Hattie Springs, of Gaston County and State of North Carolina, party of the first part to Stowe Spinning Company, Acme Spinning Company, Linford Mills, Inc., and Perfection Spinning Company, corporations of Gaston County and State of North Carolina, being the parties of the second part in that warranty deed, and the lands so bargained and sold and transferred to the parties of the second part, consisted of:

"Being lots Nos. 1, 2, 3, and 4, as shown on a map or plat of the Mary C. Skidmore lands as surveyed by A. W. Hoffman, Surveyor, said map being duly recorded in Plat Book 2 at page No. 3 in the Office of the Regi-[362]ster of Deeds for Gaston County, and as recorded with the map of land of Ed Reece in said office."

And it is further stipulated in connection with such land so transferred and so owned as just indicated, that that is the land on which the building housing the post office, and on the second floor of which there is the P. O. S. Hall, and also on the first floor there is a grocery store, and that that building is located on the land just described.

And I take it it may also be stipulated together with what I have just indicated, that the ownership of the land continues in the same parties as indicated in the warranty deed concerning which I have just offered to stipulate.

Trial Examiner WHITTEMORE. Do I understand you join in that stipulation?

Mr. WHITLOCK. It is right in the deed.

Mr. GASTON. Right.

Mr. MASON. Yes.

(Discussion off the record.)

Trial Examiner WHITTEMORE. On the record.

Mr. GARVER. It is further offered to stipulate that the movie theatre building in North Belmont, concerning which there has been testimony in this record, is located on land which was transferred and sold, that is, the ownership of which was trans-

ferred on November 13, 1930, from the City Lumber Company, a corporation created, organized, and existing under and [363] by virtue of the laws of the State of North Carolina, being the party of the first part in such transfer, and the transfer was to Stowe Spinning Company, Acme Spinning Company, Perfection Spinning Company, and Linford Mills, Inc., of the County of Gaston and State of North Carolina, parties of the second part; such transfer being a transfer involved in a deed from the parties that I have just indicated, and such deed being dated November 13, 1930, and that the land so transferred and sold to the parties of the second part consisted of:

"Lots Nos. 5, 6, 7, and 8 as shown on a certain map or plat recorded in the Office of the Register of Deeds for Gaston County in Plat Book No. 2, page 3."

And further offer to stipulate that the land just described is the land on which—well, I think I have already indicated that that is the land on which the movie theatre building is located, and further, that such land is still in the ownership of the same parties referred to as having received title to the land in this stipulation, under a deed dated November 13, 1930.

Trial Examiner WHITTEMORE. Do you join in that stipulation?

Mr. GASTON. Yes, sir.

Mr. MASON. That is agreeable.

Mr. WHITLOCK. Yes.

* * *

[367] FLOYD CHILDERS (Company witness).

* * *

[368] Direct examination by Mr. WHITLOCK:

Q. What is your name?—A. Floyd Childers.

Q. And how old are you?—A. Thirty-five.

Q. Where do you work at the present time?—A. I work at the Stowe Thread Company.

Q. What?—A. Stowe Thread Company.

Q. Where did you work on or about the 24th day of February 1945?—A. Stowe Spinning Company.

Q. Stowe Spinning Company?—A. Yes.

Q. Was that the day on which Mr. John Hall terminated his employment?—A. Yes, sir.

Q. Or the day when his employment was terminated at Stowe Spinning Company?—A. Yes.

Q. What was your job there at that time?—A. Second hand.

Q. What are the duties of a second hand?—[369] A. Well, I am supposed to do the fixing if a loom breaks down, and handle the hands.

Q. Handle the what?—A. Put the help to work and keep them on their job.

Q. Now, do you call that second hand or section hand?—A. They call it section hand.

Q. Were you under Mr. McCarn or over him?—A. I was under him.

Q. Did you have anything to do with Mr. Hall's work there in the supervision or anything of that sort?—A. Yes; I was over him.

Q. Well, now, tell just what happened that morning, leading up to the incident that has been testified about here; that is, the termination of his employment, what happened before and at the time?—A. Well, that morning he came in and he—came in to work at 7:00 o'clock and he doffed, I think, seven or eight frames or had the doffers to doff them, and he went out. Well, I didn't know where he was gone and I come across the shop and some of his frames had stopped. Well, I looked for Mr. Hall, couldn't find him anywhere. Well, I went on and got the three doffers and started them in, and Mr. Hall was gone about an hour, and I started them in, started the three doffers in, and I doffed three frames, and we were on the fourth one when he came back.

[370] Well, I went back over to Mr. Hall, I told him, I says: "Mr. Hall, you have to stay here on your job and watch your job closer because we can't have these frames stopped like that."

Well, about that time Mr. McCarn come down, he came down to me and asked me why all the frames were stopped.

Well, I told him that Mr. Hall went out, I couldn't find him, and the frames was stopped.

About that time, Hall come in, Mr. McCarn said: "Let's go over there and see Mr. Hall," so we went over. He was over there two or three frames from us, puling down a frame, and he, Mr. McCarn, asked him where he had been.

He said he had been to get his breakfast.

Mr. McCarn told him that he would have to get his breakfast before he come on the job. Mr. Hall said, "By God, I will just quit," and slammed his beams up on the creel.

Then he said, "No, I won't quit, I will just let you fire me."

Mr. McCarn told him, "Well," he says, "now you done quit."

He said, "No," he says, "I am not going to quit," he said, "I am going to let you fire me."

Mr. McCarn told him, "Well, you can call it anything you want to," and told me to put another man on his job.

Q. And did you put another man on his job?—A. Well, I think I ran the job the rest of the day.

[371] Q. How is that?—A. I think I run the job the rest of the day.

Q. Well, did you get anybody and put in his place?—A. Yes.

Q. How long was it?—A. The next morning.

* * * *

[375] Redirect examination by Mr. WHITLOCK:

Q. When you first found Hall away from his post of duty that morning, how many doffers were there there?—A. I done got all the doffers in, I had three doffers there that morning.

Q. What time did you get them in?—A. Well, I usually had them in by a quarter after seven.

Q. Did you have them all in that morning by a quarter after seven?—A. Yes.

Q. This boy you went after, what time did you get him there?—[376] A. Well, he lives right at the mill, takes just a few minutes to send out after him.

Q. All right.

Trial Examiner WHITTEMORE. Well, I would like to have the witness straighten it out. It is my understanding that when he looked for the doffers that were not there, now he said in answer to this question that they were there at that time, quarter past seven, now, which is which?

Mr. WHITLOCK. Will you state which is which?

The WITNESS. Well, yes; they doffed some of the frames, they doffed seven or eight, I believe it was, and then Hall went out after his breakfast. Well, the doffers are allowed—they get allowed, they don't have to get permission to go out, they go out, but the head doffer has to be on the job, that is his job to stay there his eight hours and watch the frames and help keep the job agoing. I done had the doffers and they done doffed some of the frames before Hall went out.

By Mr. WHITLOCK:

Q. Before you missed Hall?—A. Yes.

Trial Examiner WHITTEMORE. That still does not answer my question. You are now testifying that the doffers were there all the time. You first testified, as I understood you, when you found that Hall wasn't there, there wasn't any doffers available, and when you found the doffers you put them [377] to work.

The WITNESS. Well, they had been working, and they went

outside; when they get around they catch up and when they get around they go out on the outside.

Trial Examiner WHITTEMORE. Well, the point is, then, as I understand it, they had been there and had done some work and had gone out?

The WITNESS. Yes.

Trial Examiner WHITTEMORE. Then after that you noticed Hall was gone?

The WITNESS. The frames were stopped. The head doffer's job was to stay in there and keep the frames going, the doffer never would doff if you didn't have someone there to start them in.

Trial Examiner WHITTEMORE. Then when you noticed that the frames were stopped you went to look for the doffers and Hall?

The WITNESS. That is right.

Trial Examiner WHITTEMORE. Then when you noticed that the frames were stopped you went to look for the doffers and Hall?

The WITNESS. That is right.

Trial Examiner WHITTEMORE. And you found some doffers and put them to work?

The WITNESS. That is right.

[378] Trial Examiner WHITTEMORE. The doffers were not there when you found the first frames standing?

The WITNESS. That is right.

* * *

[381] JAMES HAROLD BALLARD (Company witness).

* * *

Direct examination by Mr. MASON:

Q. What is your name, please, sir?—A. James Harold Ballard.

By Mr. WHITLOCK:

Q. How old are you?—A. Twenty-nine.

Q. Where do you work at this time?—A. Stowe Spinning Company.

Q. Where did you work on or about January 10th, January 24, 1945—February, I mean.—A. Stowe Spinning Company.

Q. All through the month of February?—[382] A. Yes, sir.

Q. What was your job?—A. Overseer, second shift.

Q. How long have you held that shift?—A. Sixteen months at the present time.

Q. Did you know John—first, did you know George W. Gainey?—A. Yes, sir.

Q. Did he work under you at Stowe Spinning Company?—A. He did, on a split shift, four hours and evening.

Q. Do you know his boy, his son Alfred?—A. I am acquainted with him; yes, sir.

Q. Sir?—A. I am acquainted with him.

Q. Did you discharge Mr. Gainey on about the 24th of February, 1945?—A. Yes, sir.

Q. And his wife?—A. Yes, sir.

Q. Daughter?—A. Yes, sir.

Q. Will you relate the circumstances under which they were discharged and the reason for the discharge?—A. Well, on Saturday afternoon, when we run on Saturday, I come in at 3:00 o'clock in the evening, which was Mr. Gainey's regular shift, and when I came to work, I was given orders by [383] Mr. McCarn that the boy had quit that morning and the family would be discharged on account of the boy's quitting, and it was my duty to relay it to Mr. Gainey.

Q. Well, did you tell him?—A. I did.

Q. What did you say, or what did he say?—A. Well, he was kind of riled up to start with, he said Mr. Hall was run off for belonging to the union and "By God, they wouldn't run" him off, and wanted me to come down and tell his wife. So we went on down to where his wife was. I went right behind her, she was very nice about it. I told her that they were being discharged for the boy quitting; said that was all right if her work wasn't satisfactory, it would suit her to get out, all right.

* * *

[399] J. W. MILLER (Company witness).

* * *

Direct examination by Mr. GASTON:

Q. What is your name, please, sir?—A. J. W. Miller.

Q. Mr. Miller, where do you live?—A. I live in North Belmont.

Q. What sort of a job do you hold?—A. Superintendent of Perfection Spinning Company.

Q. Are you the chairman of the School Board of North Belmont?—A. Yes, sir.

* * *

[402] CROSS-EXAMINATION

* * *

[405] Q. Who are the other members of the North Belmont School Board?—A. Mr. Thower and Starnes.

Q. Thower?—A. Yes; sir; John Thower.

Q. Sir?—A. John Thower and John Starnes.

Q. Where does Mr. Thower work?—[406] A. He works at the Acme Spinning Company.

Q. And what is his position there?—A. He is overseer of the card mill.

Q. And where does Mr. Starnes work?—A. He works at the Linford.

Q. What is his position over there?—A. He is superintendent.

[432] ARGUMENT OF P. C. WHITLOCK, ESQ., ON BEHALF OF THE RESPONDENTS

Mr. WHITLOCK. Mr. Examiner, we take the position that as to the use of the hall, the refusal of the use of the hall [433] for the purpose of holding therein a union meeting, that the Respondents are not required, under the law or under the Constitution, to provide private property for the use of the union or for any other purpose.

* * *

I do not believe that these companies were required to [434] provide this hall for use by the union or anybody else. It is private property. * * *

* * *

BOARD'S EXHIBIT NO. 2

NOTICE TO EMPLOYEES OF STOWE SPINNING

There will be a Mass Meeting for all Employees of the Stowe Spinning Company on

Sunday, January 28, 1945 at 2:00 P. M.

To be held in

The Hall of the Patriotic Sons of America—Over the Post Office

We urge all employees to attend this meeting in order that you may hear explained the policies and program of the Textile Workers Union of America, C. I. O.

A national union representative will be present to explain to you, in detail, the benefits this Organization can secure for all textile workers, who are members of, and working under a Textile Workers Union of America, C. I. O., contract.

You will be given every opportunity to ask any question you may have. The representative will give you full and correct answers to your questions. If he does not know the answer to your question he will tell you that he does not know the answer, but will find out the answer and have it for you at a future time.

Do not forget the time date and place! Come and bring a fellow worker.

R. H. HARRIS, *Representative,*
J. B. HURT, *Representative,*
Textile Workers Union of America, C. I. O., 1011 Independence Building, Charlotte 2, North Carolina, Phone Charlotte 3-0731.

APPENDIX TO RESPONDENTS' BRIEF

IN THE

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE FOURTH CIRCUIT

No. 5640

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

STOWE SPINNING COMPANY, ACME SPINNING COMPANY, PERFECTION SPINNING COMPANY, LINFORD MILLS, INC., RESPONDENT

On Petition for Enforcement of an Order of the National Labor Relations Board

(From Testimony of Witnesses, as set out in the Record)

DELAMBERT P. STOWE (Board Witness)—Cross examination. (39)

Q. (By Mr. Hollowell): You said that no other organization other than the Patriotic Order Sons of America has been permitted to use that hall. In setting up that policy, was there any intent on your part to discriminate against any other organization, union or otherwise?

A. It was never the intent on our part to do so, but you know all fraternal orders, they usually have

their own halls to meet in and not interfered with by other meetings.

BAXTER BLACK (Board Witness)—Cross-examination (61)

Q. (By Mr. Whitlock): How many members has the order?

A. We have 300 and some odd members.

Q. Are there any members other than mill workers?

A. Well, we have a few outsiders, they work in the Acme Mill, though.

Q. Do you have any members who do not work in any of the mills?

A. No, I don't think so.

Q. You don't have any farmers?

A. No, sir.

Q. Merchants?

A. Yes, we have merchants.

Q. Do they work in the mills?

A. They work in the stores.

Q. Well, are they mill stores?

A. Mill stores.

Q. You mean that they belong to the stores operated by the mills?

A. No, they are not operated by the mill, but people in the community.

Q. Well, they own the buildings?

A. They own the buildings.

Q. And these merchants that you speak of who are members of the order operate the stores as private

enterprises, don't they?

A. They are private.

Q. Not run by any mill?

A. Not run by any mill.

Q. And how many members, about, have you who are not employed by the mill or by certain of the mills?

A. Well, I couldn't say right off hand, for I don't exactly know, but we have a few.

Q. Well, there are several?

A. Several of them, yes.

Q. In other words, a member doesn't have to be an employee of textile mill to belong?

A. No, he don't have to be.

Q. And the reason that most of the members are employees of the mills is that most of the people in the village are mill employees; is that right?

A. That is right.

* * *

(64) By Mr. Mason:

Q. The mill does not require its employees to belong to this organization?

A. No, they don't have any requirement.

Q. Do they attempt in any way to dominate any of their employees?

A. No, sir.

* * *

66

Q. By Mr. Mason: I believe you stated, Mr. Black, that it was the custom and practice of the Order when the use of the hall was requested by

any other organization of persons that the Lodge itself passed on it?

A. That it right.

Q. And this request you had was never passed upon by the Lodge?

A. No, sir.

* * *

O. R. Stewart (Board Witness)—Direct examination (71):

Q. (By Mr. Garver): So far as you knew at that time, was there any reason why Mr. Harris could not have the use of the building?

A. Absolutely, because the companies told us we could not let anybody have the building, any other organization.

* * *

(77) Cross Examination.

Q. (By Mr. Whitlock): I understood you to say, Mr. Stewart, that Mr. Harris took the matter up with you in the first instance; is that right?

A. Yes, sir, he came to see me.

Q. And you told him that you would have to see the officials of the mills; is that right?

A. I told him that he would.

Q. That he would have to see the officials of the mills?

A. Told him that he would have to see the President of the Order.

Q. That he would have to see the President of the Order. Well, then, do you know whether he saw the President of the Order or not?

A. I didn't at that time, but the next day I knew he did.

Q. Well, then when did you go to see Mr. Stowe?

A. Who?

Q. When did you go to see Mr. Stowe?

A. I went to see Mr. Stowe on Tuesday; the next day after Mr. Harris saw me.

* * *

(78) Q. And would you just repeat what Mr. Stowe said to you.

A. He only reviewed the conversation and the agreement that he had with the Order at the time that the building was built.

Q. Yes, sir.

A. What the building should be used for, and it was for our part, that we did not let it out unless it was for our association or special meetings which we might have in the building.

Q. Yes.

A. In other words, it was wholly to be used by us and there was nothing that would conflict with our using the building and if any other organization then wished to use the building, it would have to be made satisfactory with them.

TRIAL EXAMINER WHITTEMORE: With whom the Witness. With Mr. Stowe, the mill officials.

Q. By Mr. WARTELLE: Was the Union mentioned at that time at all?

A. It was not mentioned to me in the office.

Q. I mean now the arrangement that Mr. Stowe reviewed there with reference to the agreement be

tween the owners of the hall and the Order, was that the correct statement of the agreement?

A Yes, sir, it was to be used solely for us.

Q And you knew that all the time, did you not?

A Yes, sir.

Q That was the understanding from the beginning?

A From the beginning, yes, sir.

Q Something has been said here about the use of the hall by churches, do you know anything about that?

A Well, that comes under the social activities of the Order, and the members of the Order, which make up the churches have the use of the hall for suppers.

Q Did you go to Mr. Stowe or any other representative of the organization to get the use of the building for church suppers, or anything of that sort?

A Didn't go to Mr. Stowe but the deputy down there, we always conferred with him about the building he had charge. In other words, we would go to Mr Stowe.

Q And these other meetings were related to the Order?

A Yes, sir, church fairs to provide money for our churches.

Q Some of the social activities of the Patriotic Order Sons of America?

A Patriotic Order Sons of America.

* * * * *

Cross Examination By Mr. Mason

85 Q Does the membership exist entirely of em

ployees of these mills?

A. No, it does not.

Q. Have you members from the town of Mount Holly?

A. Yes, sir.

Q. And the immediate vicinity?

A. Yes, sir.

Q. Any business men in the vicinity who are not employed by either of these four mills?

A. We do.

Q. And it is not limited to textile operators?

A. That is right.

* * * *

JOHN A. McCAREN (Board Witness). Direct Examination (By Mr. Garver) (92)

Q. What is the work of a head doffer?

A. The work-doffer . . . the head doffer, he watches the frames and starts the doffers in when the frames get full, pulls the frames down and winds the traverses, and helps the doffers keep the frames running.

Q. What is the work of pasting, piecing up, what does that refer to? (93)

A. That puts the ends up at the point where the doffers tear it down, when they are twisting the frames.

Q. Well, do the doffers do the pasting up? piecing up

A. Yes, sir.

Q. Does the head doffer do the pasting up? piecing up

A. He helps them.

Q. How frequently does the doffer . . . they do the pasting up? (piecing up)

A. That is right; he is supposed to help the doffers keep the frames going.

* * *

CROSS EXAMINATION (113) BY MR. WHITLOCK:

Q. Did Mr. Hall have permission to quit at the time . . . I mean, to leave the frames, or his post of duty that morning at the time he did leave?

A. No, sir.

Q. How long was he away from his post of duty?

A. The second hand said about an hour.

Q. When he was out what happened to the frames, spinning frames, during that time?

A. That stopped the doffing.

Q. Would they have been stopped if he had been there?

A. No, sir.

Q. What effect did that stoppage have on the operation of other parts of the mill?

A. Well, it was holding up production.

117 Q. By Mr. Whitlock: Did you discharge Hall on account of any union activities that he had been engaged in?

A. No, sir.

Q. Did you know at that time that he was a member of the Union?

A. No, sir.

Q. Did you discuss union matters with him at all?

A. No, sir.

Q. Did you discharge the Gaineys, either one of them, on account of any union activities on their part?

A. No, sir.

Q. Did you know at that time that any of the Gaineys had been engaged in union activities?

A. I knew Mr. Gainey belonged to the Union.

Q. You knew Mr. Gainey had?

A. Yes, sir.

Q. Did that have anything to do with your discharging him?

A. No, sir.

Q. Is it the policy of your company or the company that you are working for to furnish their houses for employees of other companies to live in?

A. No, we don't.

* * *

JOHN HALL (Board Witness)—Cross Examination by Mr. Whitlock. (255)

Q. All right. Now, what is this piecing up that you have spoken of?

A. That is putting up ends behind the doffers.

Q. What?

A. Putting up ends behind the doffers—taking a full bobbin, running your thread through on the empty bobbin and putting up the ends.

Q. You had been doing that in addition to doffing, had you?

A. That is right.

Q. For how long?

A. Ever since I took the first shift job as head doff.

Q. How long had that been?

A. Well, I can't recall exactly how long it was.

Q. Two or three months?

A. I wouldn't say.

Q. Had you made any complaint about having to do piecing up?

A. No, I had not. Mr. Childers had spoken to me though. "You are ruining your doffers by doing it." I took it on myself to help them out.

Q. And you were working two shifts?

A. That is correct.

Q. And getting full pay for two shifts?

A. That is correct.

256 Q. And on this morning when you were reprimanded by Mr. McCarn for leaving your work, you told him you would quit before you would do any more piecing up?

A. That is correct.

Q. When did you decide to quit piecing up?

A. When he jumped on me about running my job.

Q. And so it had been all right with you to piece up before that time, but when he reprimanded you for leaving your job, you decided you would just leave off that part of the work?

A. I decided for myself that I would run my job from then on and let the other doffers run their job.

Q. Now, you say you could have misunderstood Mr.

McCarn, but what you thought he said, something about your having something to do with getting applications for the Union?

A. That is correct.

Q. You can't say positively about that.

A. Not positively I couldn't because I was angry.

Q. You were mad?

A. That is correct.

Q. And finally flew off the handle?

A. Yes, sir.

Q. How?

A. That is correct.

Q. Did you cuss?

A. I don't cuss.

(257) Q. Did Mr. McCarn fly off the handle?

A. No, sir, he did not.

Q. He was calm.

A. That is correct.

Q. And Mr. Childers was there, was he?

A. Well, he was, in about five feet, I would say.

Q. Did he fly off the handle?

A. No, sir, he did not.

* * *

Q. You were the only one that showed any signs of being mad, were you?

A. Well, that it true.

Q. And you said you would quit before you would keep on doing the work you had been doing for the last two months or so? (258)

A. That is right

* * *

BAXTER BLACK, Board Witness, recalled. (387)

By MR. GASTON:

Q. Well, Mr. Harris testified in substance, as I recall, that you told him after you, as President of the P.O.S. of A. had first given him permission to use the P.O.S. of A. hall, for a union meeting and had said that your word was final (388) that after that, you told him Mr. Stowe had said that the superintendents of the four mills, that is, the four respondents in this case, had had a meeting and had decided that the hall could not be used for the union meeting.

A. They had a meeting but they didn't tell me anything about it.

* * *

Q. All right. I understood him to testify that you told him he could absolutely have this building on Sunday afternoon at (389) 2:00 o'clock, and he asked you if your word was final, you said, yes, sir, that whatever you said went, was final.

A. I didn't tell him that. I told him the only way he could get the hall would be for us to have a meeting first.

Q. You mean by a meeting a meeting of the Order?

A. That is right.

Q. And you hadn't had that meeting?

A. We hadn't had it.

Q. What is the attitude of the membership of the lodge about outsider using the Lodge hall?

A. Well we don't ever like for outsiders to use our Lodge on account of our equipment we have in there, our secret order stuff, and all that, but if we do let it go, we take a vote on whether anybody can use our hall at all or not.

[fol. 129] PROCEEDINGS IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT

No. 5640.

NATIONAL LABOR RELATIONS BOARD, Petitioner,

versus

STOWE SPINNING COMPANY, ACME SPINNING COMPANY, PERFECTION SPINNING COMPANY, LINFORD MILLS, INC., Respondents

On Petition for Enforcement of an Order of the National Labor Relations Board

July 16, 1947, petition for enforcement filed and the cause docketed.

Note: The petition for enforcement is in the words and figures following:

(Style of Court and Title Omitted.)

To the Honorable, the Judges of the United States Circuit Court of Appeals for the Fourth Circuit:

The National Labor Relations Board, pursuant to the National Labor Relations Act, (Act of July 5, 1935, 49 Stat. 449, c. 372; U. S. C. § 151 *et seq.*), respectfully petitions this Court for the enforcement of its order against respondents Stowe Spinning Company, Acme Spinning Company, Perfection Spinning Company, Linford Mills, Inc., North Belmont, North Carolina, and their officers, agents, successors, and assigns. The proceeding resulting in said order is known upon the records of the Board as "In the Matter of Stowe Spinning Company, Acme Spinning Company, Perfection Spinning Company, Linford Mills, Inc. and Textile Workers Union of America, C. I. O., Case No. 5-C-1887."

In support of this petition, the Board respectfully shows:

(1) Respondents are North Carolina Corporations engaged in business in the State of North Carolina, within this [fol. 130] Judicial Circuit where the unfair labor practices occurred. This Court therefore has jurisdiction of this petition by virtue of Section 10 (e) of the National Labor Relations Act.

(2) Upon all proceedings had in said matter before the Board, as more fully shown by the entire record thereof, certified by the Board and filed with this Court herein, to which reference is hereby made, the Board on August 26, 1946, duly stated its findings of fact, conclusions of law, and issued an order directed to the respondents, and their officers, agents, successors and assigns. So much of the aforesaid order as relates to this proceeding provides as follows:

ORDER

Upon the basis of the foregoing findings of fact and conclusions of law, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, Stowe Spinning Company, North Belmont, North Carolina, its officers, agents, successors and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership in Textile Workers Union of America, C. I. O., by discriminatorily discharging any of its employees or by discriminating in any other manner in regard to their hire and tenure of employment or any term or condition of their employment;

(b) Refusing to permit the use of the Patriotic Order Sons of America hall by its employees or employees of Acme Spinning Company, Perfection Spinning Company or Linford Mills, Inc., or by Textile Workers Union of America, C. I. O., *or any other labor organization*, for the purpose of self-organization or collective bargaining;

(c) In any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form labor organizations, to join or assist Textile Workers Union of America, C. I. O., or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the Act.

2. Take the following affirmative action, which the Board finds will effectuate the policies of the Act:

(a) Offer to Jobie R. Hall, George W. Gainey, Mabel Gainey, and Emma Louise Gainey, immediate and full re-

reinstatement to their former or substantially equivalent positions, without prejudice to their seniority and other rights and privileges;

(b) Make whole the employees named in paragraph 2 (a) above, for any loss of earnings that they may have suffered by reason of the respondent's discrimination against [fol. 131] them, by payment to each of them of a sum of money equal to the amount which each normally would have earned as wages from the date of the discriminatory discharge to the date of the respondent's offer of reinstatement, less his or her net earnings during said period;

(c) Upon request, grant to its employees and employees of Acme Spinning Company, Perfection Spinning Company, or Linford Mills, Inc., and to Textile Workers of America, C. I. O., or any other labor organization, the use of the Patriotic Order Sons of America hall for the purposes of self organization or collectively bargaining;

(d) Post at its mills in North Belmont, North Carolina, copies of the notice attached hereto, marked "Appendix A". Copies of said notice, to be furnished by the Regional Director for the Fifth Region, shall, after being duly signed by the respondent's representative, be posted by the respondent immediately upon receipt thereof, and maintained by it for sixty (60) consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the respondent to insure that said notices are not altered, defaced, or covered by any other material;

(e) Notify the Regional Director for the Fifth Region in writing, within ten (10) days from the date of this Order, what steps the respondent has taken to comply herewith.

Upon the basis of the above findings of fact and conclusions of law, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondents Acme Spinning Company, Perfection Spinning Company, and Linford Mills, Inc., and their officers, agents, successors and assigns, shall:

1. Cease and desist from interfering with, restraining, or coercing their employees in the exercise of the right to self-organization, to form labor organizations, to join or assist Textile Workers Union of America, C. I. O., or any other

labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection as guaranteed in Section 7 of the Act, by refusing to permit the use of the Patriotic Order Sons of America hall by employees of any of the respondents' mills, including the employees of the respondent Stowe Spinning Company, or by Textile Workers Union of America, C. I. O., or any other labor organization, for the purposes of self-organization or collective bargaining.

2. Take the following affirmative action, which the Board finds will effectuate the policies of the Act:

(a) Upon request, grant to all persons employed in the said respondents' mills, and to employees of Stowe Spinning Company, and to Textile Workers Union of America, C. I. O., or any other labor organization, the use of the Patriotic Order Sons of America hall for the purposes of self organization or collective bargaining;

(b) Post at each of their mills in North Belmont, North Carolina, copies of the notice attached hereto, marked "Appendix B". Copies of said notice, to be furnished by the Regional Director for the Fifth Region, shall, after being duly signed by the respective representative of each re- [fol. 132] spondent be posted by the respondents immediately upon receipt thereof, and maintained by it for sixty (60) consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the respondents to insure that said notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for the Fifth Region in writing, within ten (10) days from the date of this Order, what steps the respondents have taken to comply herewith.

(3) On August 26, 1946, the Board's Decision and Order was served upon respondents by sending a copy thereof postpaid, bearing Government frank, by registered mail, to respondents' counsel.

(4) Pursuant to Section 10(e) of the National Labor Relations Act, the Board is certifying and filing with this Court the transcript of the entire record in the proceeding before the Board, including the pleadings, testimony and

evidence, findings of fact, conclusions of law, and order of the Board.

Wherefore, the Board prays this Honorable Court that it cause notice of the filing of this petition and transcript to be served upon respondents, and that this Court take jurisdiction of the proceeding and of the questions determined therein and make and enter upon the pleadings, testimony and evidence, and the proceedings set forth in the transcript and upon so much of the order made thereupon set forth in paragraph (2) hereof, a decree enforcing in whole said order of the Board, and requiring respondents, and their officers, agents, successors, and assigns to comply therewith. The Board further prays that this Honorable Court, in enforcing said order, shall provide that the aforementioned notices to be posted by respondents, marked "Appendices A and B", shall specifically recite that the Board's order has been enforced by a decree of this Court so that the introductory clause of the notice shall read as follows: "Appendices A and B, Notices to all Employees, Pursuant to a Decree of the United States Circuit Court of Appeals enforcing a Decision and Order of the National [fol. 133] Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:"

National Labor Relations Board, A. Norman Somers,
Assistant General Counsel.

Dated at Washington, D. C., this 9th day of July 1947.

"Appendix A"

Notice to All Employees
Pursuant to a Decision and Order

of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

We will not in any manner interfere with, restrain, or coerce our employees in the exercise of their right to self-organization, to form labor organizations, to join or assist Textile Workers Union of America, C. I. O., or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the pur

pose of collective bargaining or other mutual aid or protection.

We will offer to the employees named below immediate and full reinstatement to their former or substantially ~~equivalent~~ positions without prejudice to any seniority or other rights and privileges previously enjoyed, and make them whole for any loss of pay suffered as a result of the discrimination.

John R. Hall	Mabel Gainey
George W. Gainey	Emma Louise Gainey

We will not refuse to permit the use of the Patriotic Sons of America hall by our employees and other employees of the North Belmont, North Carolina Mills, or by Textile Workers Union of America, C. I. O., or any other labor organization, for the purposes of self-organization or collective bargaining. Upon request, we will grant to our employees and to other employees of the North Belmont Mills, and to Textile Workers Union of America, C. I. O., or any other labor organization, the use of the Patriotic Order Sons of America hall for the purposes of self-organization or collective bargaining.

All our employees are free to become or remain members of the above-named union or any other labor organization. We will not discriminate in regard to hire or tenure of employment or any term or condition of employment against any employee because of membership in or activity [fol. 134] on behalf of any such labor organization.

Stowe Spinning Company (Employer); by —— —— (Representative), —— (Title).

Dated —— —— ——.

Note: Any of the above-named employees presently serving in the armed forces of the United States will be offered full reinstatement upon application in accordance with the Selective Service Act after discharge from the armed forces.

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

"Appendix B"

Notice to All Employees
Pursuant to a Decision and Order

of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

We will not interfere with, restrain, or coerce our employees in the exercise of their right to self-organization, to form labor organizations, to join or assist Textile Workers Union of America, C. I. O., or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection by refusing to permit the use of the Patriotic Order Sons of America hall by our employees or other employees of the North Belmont, North Carolina Mills, or by Textile Workers Union of America, C. I. O., or any other labor organization, for the purposes of self-organization or collective bargaining.

Upon request, we will grant to our employees and to other employees of the North Belmont Mills, and to Textile Workers Union of America, C. I. O., or any other labor organization, the use of Patriotic Order Sons of America hall for the purposes of self-organization or collective bargaining.

——— (Employer), by ——— (Representative), ——— (Title).

Dated ———.

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

[fol. 135] District of Columbia, ss:

A. Norman Somers, being first duly sworn, states that he is Assistant General Counsel of the National Labor Relations Board, petitioner herein, and that he is authorized to and does make this verification in behalf of said Board; that he has read the foregoing petition and has

knowledge of the contents thereof; and that the statements made therein are true to the best of his knowledge, information, and belief.

A. Norman Somers, Assistant General Counsel.

Subscribed and sworn to before me this 9th day of July 1947. Kathryn B. Harrell, Notary Public, District of Columbia. My Commission expires February 29, 1952. (Seal of Notary.)

July 16, 1947, the entire certified record is filed.

Same day, notification of the filing of the petition for enforcement, together with copy of petition for enforcement, transmitted by mail to each of the respondents, at Belmont, North Carolina.

July 18, 1947, the appearance of Gerhard P. Van Arkel, General Counsel, and A. Norman Somers, Assistant General Counsel, National Labor Relations Board, is entered for the petitioner.

July 19, 1947, appendix to brief of petitioner is filed.

July 21, 1947, the appearance of P. C. Whitlock is entered for the respondents.

July 22, 1947, affidavits of service of the Board's petition, designation and certificate of record, and appendix are filed.

July 23, 1947, the appearance of George B. Mason is entered for the respondents.

[fol. 136] July 28, 1947, the appearance of Harley B. Gaston is entered for the respondents.

July 29, 1947, the appearance of L. B. Holloweli is entered for the respondents.

September 6, 1947, brief on behalf of the petitioner is filed.

September 19, 1947, affidavit of service of the Board's brief is filed.

October 18, 1947, brief and appendix on behalf of the respondents are filed.

November 21, 1947, the appearance of Mozart G. Ratner, Principal Attorney, National Labor Relations Board, is entered for the petitioner.

Argument of Cause

November 21, 1947, (November term, 1947) cause came on to be heard before Parker, Soper and Dobie, Circuit Judges, and was argued by counsel and submitted.

[fol. 137] OPINION—Filed December 22, 1947

UNITED STATES CIRCUIT COURT OF APPEALS, FOURTH CIRCUIT

No. 5640

NATIONAL LABOR RELATIONS BOARD, Petitioner,

versus

STOWE SPINNING COMPANY, ACME SPINNING COMPANY, PERFECTION SPINNING COMPANY, Linford Mills, Inc., Respondents

On Petition for Enforcement of an Order of the National Labor Relations Board

(Argued Nov. 21, 1947. Decided Dec. 22, 1947)

Before Parker, Soper and Dobie, Circuit Judges.

Mozart G. Ratner, Principal Attorney, National Labor Relations Board, (Robert N. Denham, General Counsel; David P. Findling, Associate General Counsel; A. Norman Somers, Assistant General Counsel; Dominick L. Manoli, [fol. 138] Frederick D. Vincent, Jr., and Ida Klaus, Attorneys, National Labor Relations Board, on brief) for Petitioner, and P. C. Whitlock (Whitlock, Dockery & Moore; George B. Mason, Harley B. Gaston and L. B. Hollowell on brief) for Respondents.

SOPER, Circuit Judge;

The National Labor Relations Board has petitioned for enforcement of an order issued by it and directed in part to the respondent Stowe Spinning Company, and in part to the respondents Acme Spinning Company, Perfection Spinning Company and Linford Mills, Inc., jointly. After conventional proceedings the Board concluded that all the respondents had violated Section 8(1) of the National Labor Relations Act, 29 U. S. C. A. §151 et seq. by interfering with, restraining and coercing their employees in the exercise of rights guaranteed by Section 7 of the Act; and that respondent Stowe had also violated Section 8(3) of the Act by discharging four employees on account of their union membership or activity. The respondents oppose enforcement on the ground that the Board's findings of fact

are not supported by substantial evidence, that its conclusions of law are erroneous, and, on the further ground, that the Board's order in certain respects deprives them of rights secured by the Constitution of the United States. The most important issue in this case is whether the Board may compel the respondents to allow labor unions the use of a hall or auditorium in a building of respondents for the purposes of organization and collective bargaining.

Each of the four respondents operates a cotton mill [fol. 139] in North Belmont, North Carolina. Most of the corporate officers of each respondent also hold offices in the others. North Belmont is an unincorporated village approximately two and a half miles north of the town of Belmont. It is largely, if not entirely, devoted to the business operations of the respondents and is, in fact, a company town. Each respondent owns a substantial number of houses in North Belmont which it rents to its employees and their families. These houses comprise the so-called mill villages, which in turn comprise North Belmont.

There are only three buildings in North Belmont of a more or less public nature, a public school house, owned by the state, a motion picture theatre, and a two-story building owned by the respondents jointly to which we must direct particular attention. The first floor is occupied by the United States Post Office and a grocery store. The second floor consists of a hall or auditorium, seating approximately 200 persons, and adapted to use for public meetings or other assemblies.

When this building was erected in 1937 the hall was added primarily to provide a meeting place for Patriotic Order Sons of America, a patriotic organization whose local chapter is composed largely, although not exclusively, of employees of the respondents. Since 1937 the hall has been regularly used by the Order for its weekly meetings and other business. On occasion the hall has been used for other purposes, such as church banquets, Ladies Aid Society meetings, a Christmas party for school children, and for several weeks a safety school for employees of the respondents was conducted there.

Some time in December, 1944, two representatives of the Textile Workers Union, C. I. O., came to North Belmont to investigate the possibility of organizing the employees of [fol. 140] Stowe. They induced several employees to solicit the workers to join the union. In January, 1945, Robert

Harris, a national representative of the union, came to North Belmont to arrange a mass meeting of the employees of Stowe. He requested Baxter Black, the president of the Order and an employee of Acme, to permit the union to use the hall for a meeting on the following Sunday and Black consented. Later, when knowledge of this event reached DeLambert P. Stowe, an officer of Acme and Perfection, and the agent of all the respondents charged with the management of the hall and the Post Office building, the permission was withdrawn. Harris then attempted, without success, to secure permission to hold the meeting either in the school or in the motion picture theatre. Ultimately the meeting was held on the street outside the Post Office building.

It is not immediately apparent from this recital of the facts that the refusal of the owners of the hall to allow the union to use it for a meeting of the employees of Stowe constituted a violation of the statute. The majority of the Board, however reached its conclusion in the following manner. It made the finding that the owner's refusal "to permit use of the hall for purposes of self organization in a labor union under the circumstances constituted unlawful disparity of treatment and discrimination against the Union." It pointed out that foremost among the methods universally utilized by employees in self organization is the exercise of the constitutional right of peaceable assembly. It held that the sole purpose of the respondents' action was to impede, prevent and discourage the employees in the exercise of this basic right and that by refusing the union permission to use the only available meeting place in the community, the respondents in fact deprived the employees [fol. 141] of Stowe of the right. Following this line of reasoning the Board stated its formal conclusion of law that by interfering with, restraining and coercing their employees in the exercise of the rights guaranteed in Section 7 of the Act, the respondents engaged in unfair labor practices within the meaning of Section 8(1) of the Act.

We are unable to agree with this conclusion. There is no general provision of the Act which requires an employer to treat a labor union in the same manner as it treats other persons or organizations which are not concerned with the interests or activities of labor. Section 8(3) of the Act makes it an unfair labor practice for an employer to encourage or discourage membership in a labor organization

by discrimination in regard to hire or tenure of employment or any term or condition of employment; and Section 8(4) makes it an unfair labor practice for an employer to discharge or discriminate against an employee who files charges or gives testimony in cases arising under the Act. Furthermore, acts of discrimination on the part of an employer by which one labor organization or one employee is favored over another or discriminated against in the free exercise of rights under the statute may amount to unfair labor practices and violations of the Act. None of these practices, however, are involved in the use or non-use of the assembly hall.

It is equally clear that in the matter now before us the employer has not interefered with, restrained or coerced its employees in the exercise of their rights. Even though it was evident to the workers that the action of the owners of the hall was inspired by hostility to the union, the refusal did not amount to unlawful interference, restraint or coercion. An employer may express his views on labor poli- [fol. 142] cies or problems and take any side he chooses in a labor controversy provided that his conduct does not amount to coercion; *Labor Board* v. *Virginia Electric & Power Co.*, 314 U. S. 469; and if an employer may exercise this freedom without violating the Act, he may surely decline to perform an affirmative act which will encourage and assist a union in its organizational efforts. Indeed the statute contemplates that an employer shall abstain not only from restraint or coercion, but also from all interference with its employees by preserving the strictest neutrality when they are engaged in any activities for or against the formation of a bargaining unit, and the cases so hold. See *N. L. R. B.* v. *Laister-Kauffman A. Corp.*, 8 Cir., 144 F. 2d 9; *N. L. R. B.* v. *Security Warehouse & Cold Storage Co.*, 9 Cir., 136 F. 2d 829; *N. L. R. B.* v. *Faultless Caster Corporation*, 7 Cir., 135 F. 2d 559; *N. L. R. B.* v. *William Davies Co.*, 7 Cir., 135 F. 2d 179; *N. L. R. B.* v. *Cleveland-Cliffs Iron Co.*, 6 Cir., 133 F. 2d 295. The Act seeks to guarantee employees complete freedom of choice in the selection of a bargaining representative; and it is an unfair labor practice for an employer to encourage or discourage his employees to join a bona fide union although it be the only labor organization on the scene. *N. L. R. B.* v. *American Car & Foundry Co.*, 7 Cir., 161 F. 2d 501.

The statute makes it very clear that the employer must not encourage or assist workmen in these activities. Section 8(2) declares that it is an unfair labor practice for an employer to contribute financial or other support to any labor organization; and so it appears that if the owners had freely given the use of the hall to the union as it had been given in the past to the patriotic order and to other social gatherings, it might well have been argued that an infraction of the statute had occurred. It was because of [fol. 143] considerations of this sort that the dissenting member of the Board refused to join in its decision. Pointing out that the Board for years has construed the statute as forbidding the most minute kind of financial support to labor organizations, he said:

"* * * It has frowned for example, upon letting a union organization have the profits from vending machines, even though patronized exclusively by members of the bargaining unit;[31] on the use of company office machines for preparing pamphlets;[32] the use of vacant office space for the transaction of union business;[33] and, mere per-

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[31] *Wilson & Co.* v. *N. L. R. B.*, 126 F. 2d 114, C. C. A. 7.

[32] *N. L. R. B.* v. *General Motors Corp.*, 116 F. 2d 306, C. C. A. 7; *Bethlehem Shipbuilding Corp.* v. *N. L. R. B.*, 114 F. 2d 930, C. C. A. 1; *N. L. R. B.* v. *Carlisle Lumber Co.*, 94 F. 2d 138, C. C. A. 9; *N. L. R. B.* v. *Christian Board*, 113 F. 2d 678, C. C. A. 8; *N. L. R. B.* v. *Norfolk Shipbuilding & Drydock Corp.*, 109 F. 2d 128, C. C. A. 4, enf. as mod. 12 N. L. R. B. 886.

[33] *N. L. R. B.* v. *American Mfg. Co.*, 106 F. 2d 61, C. C. A. 2, enf. as mod. 5 N. L. R. B. 443, aff'g. as mod. 306 U. S. 229; *N. L. R. B.* v. *Automotive Maintenance Machinery Co.*, 116 F. 2d 350, C. C. A. 7 (dictum); *N. L. R. B.* v. *Bigwin Paper Mill Co.*, 108 F. 2d 867, C. C. A. 5; *N. L. R. B.* v. *Carlisle Lumber Co.*, 94 F. 2d 138, C. C. A. 9; *N. L. R. B.* v. *Christian Board*, footnote 2, *supra*; *N. L. R. B.* v. *Friedrich, Inc., Ed.*, 116 F. 2d 888, C. C. A. 5; *N. L. R. B.* v. *Moore Lawn Floor Mills Co.*, 123 F. 2d 419, C. C. A. 10, mod. 21 N. L. R. B. 1040; *New Idea, Inc.* v. *N. L. R. B.*, 117 F. 2d 517, C. C. A. 7).

mission to hold union meetings on factory premises.[34] Indeed, this principle has been enunciated in so many cases that any employer who consulted counsel would be loath to let a labor organization conduct a meeting in a building owned by him for fear of incurring the risk of being cited for violation of Subsections 8(1) or (2) of the Act.

"Yet in this case, we are holding it a violation of the Act for a corporation to refuse to permit an affiliated union to use a hall which was built to afford recreational facilities for its employees. It seems to me that such a decision assumes a duty on the part of the employer to give affirmative support to labor organizations—a premise contrary to the specific language in the Act and the converse of the doctrines developed by this Board with respect to employer attitudes toward independent unions."

[fol. 144] The position of the Board baldly stated, is that when there is no place of public assembly convenient to the employees except a company building, the employer must turn it over to union organizers for a meeting on demand. The practical effect of such a holding is to require the owner to maintain the building for union purposes whenever it suits the convenience of the union to requisition it, and to that extent to require him to surrender his property rights. There can be no doubt that if such a compulsion were exercised by the Government for its own purposes, there would be a deprivation of property without due process of law, or a taking of private property for public use without just compensation in contravention of the Fifth Amendment to the Federal Constitution; and certainly if the surrender of the property against the will of the owner were compelled by any private person other than a labor union, no one would deny that a deprivation of property without due process of law had occurred.

We are told by the Board, however, that when a labor union demands the use of a meeting place in order to organize the employees, the right of the employer to regulate the use of his own property comes into conflict with the employees' right to receive information to enable them to exercise the right of self organization, and that under the

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[34] "See matter of Virginia Electric & Power Company, 44 N. L. R. B. 404, and Matter of Berkshire Knitting Mills, 46 N. L. R. B. 955."

decisions of the Supreme Court, the controversy must be resolved in the employees' favor.' The decisions referred to relate to activities of persons in the exercise of the right of free speech and free press, and in some instances to efforts on the part of union leaders to gain access to employees in order to obtain their support. Thus in *Martin* v. *Struthers*, 319 U. S. 141, a municipal ordinance forbidding any person to knock on doors or ring doorbells in order to distribute circulars, as applied to the distribution of notices [fol. 145] of a religious meeting, was held to be an unconstitutional denial of the freedom of speech and the press contrary to the First and Fourteenth Amendments; and in *Marsh* v. *Alabama*, 326 U. S. 501, an ordinance was held to be an unconstitutional infraction of the same freedoms since it forbade the distribution of religious literature on the sidewalks of a company town which, although owned by the company, were freely used by the general public. Again, in *Thomas* v. *Collins*, 323 U. S. 516, the court held unconstitutional a Texas statute which required labor organizers to register before soliciting membership in labor unions. The court said (p. 532):

"That the State has power to regulate labor unions with a view to protecting the public interest is, as the Texas court said, hardly to be doubted. They cannot claim special immunity from regulation. Such regulation however, whether aimed at fraud or other abuses, must not trespass upon the domains set apart for free speech and free assembly. This Court has recognized that 'in the circumstances of our times the dissemination of information concerning the facts of a labor dispute must be regarded as within that area of free discussion that is guaranteed by the Constitution . . . Free discussion concerning the conditions in industry and the causes of labor disputes appears to us indispensable to the effective and intelligent use of the processes of popular government to shape the destiny of modern industrial society.' *Thornhill* v. *Alabama*, 310 U. S. 88, 102-103; *Senn* v. *Tile Layers Protective Union*, 301 U. S. 468, 478. The right thus to discuss, and inform people concerning the advantages and disadvantages of unions and joining them is protected not only as part of free speech, but as part of free assembly."

The right of employees to solicit union membership on their own time in the company's plant or on the company's

parking lot used by the employees, notwithstanding company rules to the contrary, was upheld in the companion [fol. 146] cases, *Republic Aviation Corp.* v. *N. L. R. B.* and *N. L. R. B.* v. *LeTourneau Co. of Georgia*, 324 U. S. 793. The court was of opinion that in working out an adjustment in labor cases between the undisputed right of self organization guaranteed to employees under the statute and the equally undisputed right of employers to maintain discipline in their establishments, the privilege of the employees weighed the more heavily; and in considering whether the reasonable inferences to be drawn from the evidence in these cases warranted a finding of unfair labor practices, the court quoted in a footnote, p. 802, a passage from the decision of the Labor Board in the LeTourneau case where it was said that a violation of the Fifth Amendment was not necessarily caused by every inconvenience or dislocation of property rights caused by giving access to the company's property to persons whose presence was necessary to enable the employees to exercise the right of organization and of collective bargaining. To the same effect is the decision in *N. L. R. B.* v. *Cities Service Oil Co.*, 2 Cir., 122 F. 2d 149, in which the court sustained the Labor Board in upholding the right of union representatives to visit seamen on board ships where they were employed in order to discuss grievances or investigate conditions. See also *South Atlantic S. S. Co.* v. *N. L. R. B.*, 5 Cir., 116 F. 2d 480.

This review of the decisions relating to the respective constitutional rights of employer and employees carries the recent development of the law in this field as far as it has gone, and it seems obvious that it has not gone and cannot go to the extent of upholding the decision of the Board in the pending case. The conflict in the fundamental rights of the parties to labor disputes which have been described had little relation to the employer's property and caused little [fol. 147] or no interference with its devotion to the purposes of the owner. The premises of the employer were necessarily occupied by the whole group of employees assembled to operate the business, and communication between them on labor matters did not interfere substantially with the business of the employer, or inconvenience him at all when, as in the *LeTourneau* case, it was limited to the employees themselves and was done on their own free time. Even in the cases where union representatives were ad-

mitted to ships, because there alone were the seamen conveniently accessible, there was no substantial interference with the business or the property of the owner.

In the pending case, there was no evidence of any interference with or restriction upon the men in their communications on labor matters either with each other, or with the agents of the union, in the homes of the men or on the streets of the town, or for that matter in the company's plant itself; and we think that the Board had no authority to compel the companies to surrender their other property against their will for uses of which they did not approve, since the Board's power in this direction is limited by a constitutional provision of great importance under our form of government.

We must now consider the additional holding of the Board that the respondent Stowe committed other unfair labor practices in violation of Section 8(3) of the Act by discriminatorily discharging four employees, George W. Gainey, Mabel Gainey, Emma Louise Gainey, and John R. Hall.

The evidence bearing on the discharge of the Gaineys may be summarized as follows: George Gainey, his wife Mabel, his daughter Emma Louise, and his son Alfred were employed by Stowe and rented a house from it in the mill village. George Gainey, as a supporter of the union, was [fol. 148] active and successful in soliciting membership for it; and these facts were known to his employer. On February 24, 1945, McCarn, an overseer of the company, discharged a boy for not doing his work properly. Alfred Gainey, George Gainey's son, quit his job in protest. McCarn thereupon ordered the discharge of all the members of the Gainey family as they reported for work and compelled them to give up their house.

The respondent Stowe offered testimony to show that it was the policy of the company to discharge an entire family living in a company house when one member quit so as to procure the house for other employees. It pointed out that Alfred Gainey was a doffer, that there was a shortage of doffers at that time, and that it was necessary to evict the Gaineys in order that the house might be given to another doffer and his family. It was testified that McCarn tried to persuade Alfred Gainey not to quit and it is argued that this would not have been done had it been the intention of the respondent to get rid of the Gainey family. Finally

there is evidence that Gainey, after his discharge, was employed by Linford, and in view of the close interrelationship between the respondents, it may be thought that this would not have been done had there been a discriminatory motive for the discharge.

On the other hand, there was no evidence that the company policy, as applied to the Gaineys, had ever been invoked before, and there is evidence that in one instance an entire family in a company owned house was not discharged although one member quit. Furthermore, no doffer had applied for work or was awaiting employment at the time of the discharge. The Board pointed out that even if it was necessary to compel the Gaineys to vacate the house, it was not necessary also to discharge them inasmuch as residence [fol. 149], in a company owned house was not a condition precedent to employment. The Board was thus of the opinion that, in the light of the respondent's hostility to the union, the absence of any complaint as to the quality of the Gaineys' work, the fact that Gainey was an active union organizer, and the weakness of the reason assigned for the discharges, the real motive for the company's conduct was hostility to the union. We think that there was substantial evidence from which the Board's conclusions might reasonably be inferred, and, accordingly, we shall enforce its order in this respect.

With respect to the discharge of John Hall on February 10, 1945, the record discloses the following facts: Hall was hired by the respondent Stowe in October of 1944. He worked on the second shift as a doffer and, shortly after his employment was also assigned to the first shift as the head doffer, and thereafter continued to work on both the first and second shifts until the day of his discharge. On that day he arrived for work on the first shift at 6:45 A. M. and about a half an hour later he left and went home for breakfast. He had been in the habit of doing this and no objection had heretofore been made. He returned to work about three quarters of an hour later. Upon his return he was reprimanded by Childers, the second hand, and told that he would have to stay on the job in order to perform certain operations which, although not strictly part of his job as head doffer, he had been in the habit of performing. A few minutes later, McCarn, the overseer, reiterated the reprimand. Hall then lost his temper and said that before he would do the work he would quit. McCarn replied

"all right" whereupon Hall said he would not quit and that McCarn would have to fire him. McCarn, however, took the position that Hall had quit and refused to consider the [fol. 150] matter any more, and told Hall to vacate his house. Hall thereafter visited Kale, the superintendent, in the company of George Gainey in an effort to secure his reinstatement, but he was not successful and ultimately he moved and took employment elsewhere.

The question whether Hall was discharged for union activities, as the Board found, or resigned rather than do the work required of him, is not free from doubt; but we are unable to say that there was no substantial evidence to support the Board's conclusion. He was an active union organizer, and there is some evidence that his conduct in this respect was known to his employer. He was an unusually good worker and the alacrity with which the overseer seized upon his statement that he was quitting, and the subsequent refusal of the superintendent to grant his request for reinstatement, tend to show that the company's position was actuated by something other than his conduct on his last day at the plant.

The Board's order with respect to the respondents, Acme, Perfection and Linford is based entirely upon the denial of the use of the hall and accordingly, we shall deny enforcement of the order in its entirety as to these respondents. The order with respect to respondent Stowe will be modified by deleting therefrom the provisions with respect to the use of the hall, i. e., paragraphs 1(b) and 2(c) of the order, and the third paragraph of the notice which the respondent Stowe is required to post.

As modified, the order of the Board will be

Enforced.

[fol. 151] DECREE—Filed and Entered December 22, 1947

UNITED STATES CIRCUIT COURT OF APPEALS, FOURTH CIRCUIT.

No. 5640

NATIONAL LABOR RELATION BOARD, Petitioner,

vs.

STOWE SPINNING COMPANY, ACME SPINNING COMPANY, Perfection Spinning Company, Linford Mills, Inc., Respondents

On Petition for Enforcement of an Order of the National Labor Relations Board

This cause came on to be heard upon the petition of the National Labor Relations Board for enforcement of a certain order issued by the said Board against the Stowe Spinning Company, Acme Spinning Company, Perfection Spinning Company, and Linford Mills, Inc., on the 26th day of August, 1946, in a proceeding before said Board numbered 5-C-1887, entitled "In the matter of Stowe Spinning Company, Acme Spinning Company, Perfection Spinning Company, Linford Mills, Inc. and Textile Workers Union of America, C. I. O.", and upon the transcript of record in said proceeding certified and filed in this Court; and the said cause was argued by counsel.

On consideration whereof, it is ordered, adjudged, and decreed by the United States Circuit Court of Appeals for the Fourth Circuit, that enforcement of the order of the said National Labor Relations Board as to the respondents Acme Spinning Company, Perfection Spinning Company, and Linford Mills, Inc., be, and the same is hereby, denied in its entirety; that the order of the said National Labor Relations Board with respect to the respondent Stowe Spinning Company be, and the same is hereby, modi-[fol. 152] fied by deleting therefrom the provisions with respect to the use of the hall, i.e., paragraphs 1(b) and 2(c) of said order, and by deleting from the notice which the respondent Stowe Spinning Company is required to post the third paragraph thereof, and, as so modified, said order be, and the same is hereby, enforced as to the respondent Stowe Spinning Company; and that the said Stowe Spinning

Company abide by and perform the directions of the Board in said order, as so modified, contained

John J. Parker, Senior Circuit Judge; Morris A. Soper, U. S. Circuit Judge; Armistead M. Dobie, U. S. Circuit Judge.

On another day, to-wit, January 26, 1948, the mandate of this Court, in this cause, is issued and transmitted to the National Labor Relations Board, at Washington, D. C., in due form.

[fol. 153] STIPULATION

IN THE SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1947

No. —

STOWE SPINNING COMPANY, Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD, Respondent

Subject to this court's approval, it is hereby stipulated and agreed, by and between counsel for the respective parties hereto, that for the purpose of the petition for a writ of certiorari, the printed record may consist of the following:

1. Appendix to Petitioner's brief in the United States Circuit Court of Appeals for the Fourth Circuit.

2. Appendix to Respondents' brief in the United States Circuit Court of Appeals for the Fourth Circuit.

It is further stipulated and agreed that petitioner will cause the Clerk of the United States Circuit Court of Appeals for the Fourth Circuit to file with the Clerk of the Supreme Court a complete certified transcript of the record on petition for enforcement in the Circuit Court of Appeals for the Fourth Circuit; and that, in the event that the petition for writ of certiorari is granted, the printed record shall consist of the proceedings in the court below and such portions of the complete transcript of record on petition for enforcement in that court as the parties may designate.

It is further stipulated and agreed that either of the parties hereto may refer in its brief to the record filed in the [fol. 154] Supreme Court of the United States.

February 17th, 1948.

Paul C. Whitlock, Charlotte, N. C., Counsel for Petitioner; Philip B. Perlman, Solicitor General, Counsel for Respondent.

February 18, 1948.

Clerk's Certificate

United States of America,
Fourth Circuit, ss:

I, Claude M. Dean, Clerk of the United States Circuit Court of Appeals for the Fourth Circuit, do certify that the foregoing is a true copy of the appendix to petitioner's brief; the appendix to respondents' brief, and the proceedings in the said Circuit Court of Appeals in the thereinentitled cause, as the same remain upon the records and files of the said Circuit Court of Appeals, and constitute and is a true transcript of the record and proceedings in the said Circuit Court of Appeals in said cause, made up in accordance with the stipulation of counsel for the respective parties, for use in the Supreme Court of the United States on application for writ of certiorari.

In testimony whereof, I hereto set my hand and affix the seal of the said United States Circuit Court of Appeals for the Fourth Circuit, at Richmond, Virginia, this 24th day of February, A. D., 1948.

Claude M. Dean, Clerk, U. S. Circuit Court of Appeals, Fourth Circuit. (Seal.)

Supreme Court of the United States

No. 757, October Term, 1947

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

STOWE SPINNING COMPANY, ET AL.

Order extending time within which to file petition for certiorari.

Upon consideration of the application of counsel for the petitioner.

It is ordered that the time for filing a petition for certiorari in the above entitled cause be, and the same is hereby, extended to and including April 22, 1948.

(Signed) FRED M. VINSON,
Chief Justice of the United States.

Dated this 23d day of March 1948.

Supreme Court of the United States

Order allowing certiorari

Filed June 1, 1948

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Fourth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

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In the Supreme Court of the United States

OCTOBER TERM, 1947

No. 676

STOWE SPINNING COMPANY, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

No. 757

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

STOWE SPINNING COMPANY, ACME SPINNING COMPANY, PERFECTION SPINNING COMPANY AND LINFORD MILLS, INC.

CROSS-PETITION OF THE NATIONAL LABOR RELATIONS BOARD FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT AND BRIEF IN OPPOSITION TO THE PETITION OF STOWE SPINNING COMPANY IN NO. 676

The Solicitor General, on behalf of the National Labor Relations Board, prays that a writ of certiorari issue to review that portion of the decree of the United States Circuit Court of Appeals for the Fourth Circuit, entered on December 22, 1947 (R. 148–149); which denied in

part the petition of the Board for enforcement of its order against Stowe Spinning Company and denied in full the petition of the Board for enforcement of its order against Acme Spinning Company, Perfection Spinning Company and Linford Mills, Inc. The Solicitor General, on behalf of the Board, further prays that the petition for a writ of certiorari to review that portion of the decree enforcing, in part, the Board's order against Stowe Spinning Company, be denied.

OPINIONS BELOW

The opinion of the Circuit Court of Appeals (R. 137–147), is reported in 165 F. 2d 609. The findings of fact, conclusions of law, and order of the Board (R. 1–26), are reported in 70 N. L. R. B. 614.

JURISDICTION

The decree of the Circuit Court of Appeals was entered on December 22, 1947 (R. 148–149). The petition for a writ of certiorari in No. 676 was filed on March 15, 1948. On March 22, 1948, by order of the Chief Justice, the time in which the National Labor Relations Board might file an opposition to petition for writ of certiorari and a cross-petition for a writ of certiorari in this case was extended to and including April 22, 1948.

The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925, and Section 10 (e) and (f) of the National Labor Relations Act.

QUESTIONS PRESENTED

In No. 757

The employers, owners of a company-town, maintain a hall for the convenience of employee-residents and others which is the only place in the community appropriate for group meetings. Because of their hostility to unionization and their desire to impede self-organizational efforts among the employee-residents, the employers denied to a labor organization permission to use the hall for a union meeting. The question presented is whether, in the circumstances of this case, the Board could properly find that the employers, by such denial of the use of the hall, interfered with the exercise of the rights guaranteed employees under Section 7 of the Act, in violation of Section 8 (1).

In No. 676

Whether the Board's finding that Stowe Spinning Company discharged four employees for the purpose of discouraging union membership and self-organizational activity among its employees is supported by substantial evidence.

STATUTE INVOLVED

The pertinent provisions of the National Labor Relations Act are set forth in the Appendix, *infra*, pp. 37–38.

STATEMENT

Upon the usual proceedings under Section 10 of the Act, the Board, on August 26, 1946, issued its findings of fact, conclusions of law and order (R. 1–26). The pertinent facts, as found by the Board and as shown by the evidence, may be summarized as follows:[1]

I. THE MEETING HALL ISSUE

Stowe Spinning Company, Acme Spinning Company, Perfection Spinning Company, and Linford Mills, are four North Carolina corporations, with interlocking directorships, hereinafter collectively referred to as the employers, each of which operates a cotton spinning mill in the unincorporated village of North Belmont, North Carolina (R. 3–5; 28, 30–31).[2] The employers own a large number of houses adjacent to their respective mills which they rent to employees and their families (R. 4; 29, 31–32, 34, 102).[3] These

[1] In the following statement record references preceding the semicolon are to the Board's findings; succeeding references are to the supporting evidence.

[2] Geographically, North Belmont is located two and a half miles from the City of Belmont, North Carolina (R. 4; 29).

[3] Acme owns about 158 such houses, Stowe 100; Linford and Perfection each own about 75 houses (R. 4; 34).

groups of houses, called "mill villages," together with the employers' mills, comprise North Belmont (R. 4; 29). The town is policed by a deputy sheriff who is paid by the employers (R. 4; 36–37, 38).

There are only three buildings of a more or less public nature in the town. One is a public school building, owned by the state, but controlled by a school board composed entirely of officers of the employers (R. 4, 8; 32, 114–115). Another is a motion picture theater, owned and controlled by the employers jointly, but operated by a lessee (R. 4, 8; 32–33, 37, 84, 109–110). The third building, known as the P. O. S. of A. Building—the initials denoting the Patriotic Order Sons of America—is likewise owned and controlled by the employers and houses a United States Post Office and a grocery store on the first floor, and an assembly or meeting hall, seating approximately two hundred persons, on the second (R. 5; 33–42). This building was erected by the employers in 1937 to provide shopping facilities and a meeting place for the convenience of the employee-villagers, who, by virtue of their employment in the community, were isolated from other public facilities (R. 8, 10; 35, 38).[4]

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[4] Prior to the erection of the building in 1937, a group of employees, representing a fraternal order, known as the Patriotic Order Sons of America, or P. O. S. of A.; of which many of the employers' employees were members, attempted to purchase the land from the employers for the purpose of

Control and rental of the P. O. S. of A. Building is vested in an agent of the employers, D. P. Stowe (R. 4, 5; 30, 100). However, officers of the P. O. S. of A. were permitted in practice to exercise full control over the use of the hall, and they gave permission to other organizations and groups to use the hall upon request, without interference by the employers (R. 9; 43–44, 45, 48). The hall was used not only for meetings of the fraternal order but also, on numerous occasions, for other community and employee activities, such as church banquets, Ladies Aid Society meetings, Christmas parties for school children, and to house a safety school conducted by the employers for their employees (R. 9; 43–44).

In December 1944, the companies' employees began to organize and sought the assistance of the Textile Workers Union of America, affiliated with the C. I. O., hereinafter called the Union (R. 4, 5; 78). Shortly thereafter, at the request of George W. Gainey, a Stowe employee who had

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erecting such a building which could be used for meetings of the order, and other types of meetings (R. 48, 35, 38, 40–41). The employers advised the group that they planned to build a building containing a post office and stores on the site, and offered to add an additional story to the structure which could be used by the P. O. S. of A. as a meeting hall (*ibid.*). The hall was to be made available rent free, since as a representative of the employers testified at the hearing, "the revenue from those stores would take care of the expenses of the building" (R. 35, 48). Before the building was erected meetings of the fraternal order were held in the schoolhouse auditorium (R. 8; 42, 48).

assumed leadership of the organizational drive,[5] Robert Harris, a national representative of the Union, arrived in North Belmont to arrange a mass meeting of Stowe employees (R. 5–6; 77–78). After conferring with Gainey and others as to convenient places in town for holding such a meeting, Harris approached O. R. Stewart, an official of P. O. S. of A., for the purpose of obtaining the use of the P. O. S. of A. hall (R. 6; 45–46, 48, 78–79). Stewart referred him to President Black of the P. O. S. of A. (*ibid.*). On January 22, 1945, Harris went to Black and, after identifying himself as a representative of the Union, asked for permission to use the hall on the following Sunday in order that the employees of Stowe might meet and complete their union organizing campaign. Black informed Harris that the Union could use the hall and requested the payment of a nominal sum for the janitor's fee. Harris offered to pay more and Black left the matter to him. When Harris stressed the importance of a definite commitment for the use of the hall because leaflets announcing the meeting place had to be prepared and distributed, Black assured him that he was head of the lodge and his word was final. (R. 6; 79–80.) Harris thereupon had leaflets mimeographed and distributed inviting Stowe employees to attend a

[5] Gainey was, as the Board and the court below found, subsequently discharged because of his union activities. His discharge is discussed *infra*, pp. 17–21.

union meeting at the P. O. S. of A. hall (R. 6; 80, 116).

On January 23, Stewart asked Black what he had done about Harris' request for use of the P. O. S. of A. hall. When Black informed him that he had given Harris permission to use the hall, Stewart replied, "You shouldn't have done it for he ain't nothing but a Textile organizer". (R. 6–7; 46.) Black then reported the matter to Superintendent Cauble of the Acme mill (R. 7; 46). Cauble instructed him to do nothing further until Cauble had conferred with the "officials" at Belmont (R. 7; 46). Later that day, Cauble notified Black that D. P. Stowe, the employers' agent in charge of the P. O. S. of A. building, would communicate with Stewart that evening (R. 7; 46). Thereafter Stewart was summoned to D. P. Stowe's office (R. 7; 49).[6] D. P. Stowe informed Stewart that the employers had built the P. O. S. of A. hall as a place for meetings of that organization and "meetings of that type" and if any other meetings were to be held there, "we were to make the arrangements here." When D. P. Stowe asked Stewart why he had given Harris permission to hold a meeting there, Stewart answered that Black, who had referred Harris to him, did not know the latter was a union organizer. Stowe thereupon instructed

[6] J. Harold Lineberger, a ranking officer of the Perfection, Linford and Acme Companies, was also present at this interview (R. 4; 30, 49).

Stewart to inform Harris that "the building would not be available." (R. 7; 49–50.)

On January 26, after the leaflets announcing that a union meeting would be held in the P. O. S. of A. hall had been distributed, Black, on instructions from Stewart, notified Harris that he had received orders from D. P. Stowe not to permit the Union to use the hall "under any circumstances" (R. 7; 49, 81). Harris then sought to obtain permission to use the schoolhouse from J. W. Miller, who was chairman of the School Board and also superintendent of the Perfection Mill (R. 7–8; 82–83, 114). Miller told Harris that it was impossible to heat the schoolhouse because of a shortage of coal. When Harris stated that a fire was unnecessary, Miller informed him that D. P. Stowe had issued instructions not to permit the Union to use the schoolhouse for its meeting. (R. 7–8; 82–83.) Harris then sought permission to use the theater, also owned by the employers, for the meeting, but was informed by the manager that he was not permitted to allow the use of the theater for any purpose other than the showing of pictures (R. 8; 84). Frustrated in their efforts to find a sheltered meeting place in the town, the employees held the scheduled meeting on the street outside the P. O. S. of A. building (R. 7; 81).[7]

[7] Because of the unavailability of indoor meeting places no further union meetings have been held in North Belmont (R. 85–86).

The Board found that in view of the employers' practice of permitting the hall to be used by all other groups and organizations, their refusal to allow its use for organizational purposes "constituted unlawful disparity of treatment and discrimination against the Union" (R. 9). It further found on the basis of the foregoing facts, and of the evidence, discussed *infra*, pp. 13–21, showing that Stowe Spinning Company had discriminatorily discharged four employees for the purpose of discouraging membership in and activity on behalf of the Union, that the "sole purpose" of Stowe's withdrawal, on behalf of the employers, of permission to use the hall for a union meeting, "was to impede, prevent and discourage self-organization and collective bargaining by the [companies'] employees within the meaning of Section 7 of the Act" (R. 12).

The Board, as an alternative ground for its decision, concluded that under the circumstances of this case, irrespective of the employers' motive (R. 12),

> * * * by refusing to permit their employees to exercise the right to meet on company-owned property for the purpose of holding a union meeting, when no other suitable property in the community was available for the purpose, * * * the [employers] have placed an unreasonable impediment on freedom of communication and of assembly essential to the exercise of employees' rights guaranteed by Section 7

> of the Act. By their conduct in revoking the grant of the privilege to use the hall and thus denying the use of the hall to the Union, the [employers] interfered with, restrained and coerced their employees in the exercise of the rights guaranteed in Section 7 of the Act, in violation of Section 8 (1) thereof.

In support of this conclusion the Board pointed out (R. 10):

> The "right to self-organization" is more than an intangible concept. The history of labor organization has established a pattern of methods almost universally utilized by employees in self-organization, deprivation of any one of which makes inroads upon the "right."* Foremost among these methods is the general meeting,* the *sine qua non* of all true collective action, the basic constitutional right of peaceable assembly.* * * * by refusing to permit the Union to use the only available meeting place in the community, a hall erected and used by the [employers] for the benefit of citizens isolated from other public facilities by virtue of their employment in the community, the [employers] in fact deprived their employees of this basic right. The [employers] do not claim that "inconvenience" or "dislocation of property rights" would result from the Union's use of its property.* Indeed, no reason at all was offered by the [em-

*Footnotes omitted.

> ployers'] agent Stowe for countermanding Black's grant of permission to Harris to use the hall. Against the bare property right urged by the [employers] the necessity of the employees for a place to hold an organizational meeting clearly preponderates.*

The Board rejected the contention, advanced in the opinion of the dissenting member of the Board (R. 23–24), that the employers were required to deny permission to the Union to use the hall for a meeting by virtue of the provisions of Section 8 (2) of the Act which prohibit an employer from granting "support" to a labor organization (R. 11–12). The Board stated that, "in a company town, where all meeting facilities are owned by the employer, the use of such facilities by a labor organization is necessary if the employees are really to be free to exercise their rights under the Act," (R. 11), and consequently, under such circumstances, the mere grant of a meeting place to a union by an employer would not in and of itself constitute unlawful assistance to that union (R. 11). The Board pointed out that this was particularly true where, as here, the Union offered to pay for the hall (R. 11–12).*

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* In this connection the Board (R. 12, n. 18) referred to its decision in *Matter of Standard Oil Company of California*, 61 N. L. R. B. 1251, 1284, n. 33, in which it approved the use of an employer-owned hall by a labor organization for regular meetings where the labor organization paid a nominal amount yearly for such use.

II. THE DISCRIMINATORY DISCHARGES

A. *John R. Hall*, an experienced spinning room doffer, was employed by Stowe in October 1944, as a doffer on the second shift from 3 p. m. to 11 p. m. (R. 12, 13; 86–87, 51). A few weeks after he entered Stowe's employ, he was also assigned to the first shift, from 7 a. m. to 3 p. m., as head doffer (R. 13; 87). Thereafter, until his discharge, Hall worked on both shifts, six days a week or a total of 80 to 96 hours each week (R. 13; 88, 99). His work, as Stowe admitted was "very satisfactory" (R. 15; 59).

Hall's wife was also employed by Stowe on the third shift from 11 p. m. to 7 a. m. (R. 13; 86, Tr. 237). The Halls occupied one of the company-owned houses (R. 12; 86).

Hall became interested in the Union and joined it in mid-January, 1945 (R. 5–6, 12; 89). Thereafter, he assisted George Gainey in soliciting fellow employees to join the Union (R. 5–6, 12; 89, 90, 97). Both Overseer McCarn and Mill Superintendent Kale, who were the management representatives responsible for Hall's dismissal, were aware of his activity in behalf of the Union (R. 14, 18; 94, 97, 101, Tr. 296).

Hall was discharged on February 10, 1945 under the following circumstances:

The employees at the Stowe mill had no regular lunch period; they ate during their working time whenever it was possible to do so (R. 13; 51).

After Hall began working two shifts daily, he was permitted by Stowe to go to his home, approximately 100 yards distant from the mill, for his meals, once in the morning for breakfast, after his wife returned from her shift, and again later in the day for lunch (R. 13; 92–93).[9]

On the morning of February 10, Hall reported for work at 6:45 a. m. (R. 13; 91). Half an hour later, after having doffed several frames he went home for breakfast as usual (R. 13; 92). Upon his return to the mill, 30 to 45 minutes later, Second Hand Childers, Hall's immediate supervisor (R. 13; 111), who assertedly had found that a number of frames were idle,[10] informed him that he "would have to stay on [his] job and run it better" (R. 13; 94). This was the first time that Hall had been reprimanded (R. 13; 94). A few minutes later, Overseer McCarn cautioned Hall in a similar vein (*ibid.*). Hall, thereupon angrily complained that "piecing

[9] No objection had been voiced to Hall's regular practice of going home for breakfast (R. 92), and he had received express permission to go home for lunch (R. 93). Second Hand Childers, Hall's supervisor, admitted at the hearing that the doffers under Hall could leave without obtaining permission (R. 13; 112).

[10] The Board found it unnecessary to resolve the conflicting testimony as to the number of frames which became ready for doffing during Hall's absence, in view of McCarn's testimony that nothing that Hall had done or failed to do would have prompted Stowe to dismiss him and that Stowe would have retained him in its employ if he had not allegedly quit (R. 15, n. 25; 53–54).

up behind the doffers", *i. e.*, putting new yarn on the spinning frames (Tr. 255), was not part of his job as head doffer[1] and stated that before he "would piece up behind the doffers any more [he] would quit" (R. 13; 94). McCarn, as Hall testified, then "said to me that I had something to do with signing of those applications for these unions, and my answer was 'yes,' and then he said 'Well, you empty my house and I will call it not running your job' " (R. 13–14; 94, cf. 101). When Hall answered, "No, I won't quit. You will fire me," McCarn, according to his own testimony, replied, "No, you did quit"[2] and instructed Childers to replace Hall (R. 14; 52, 111–112).

Hall, upon leaving the mill, went to the house of George Gainey, the Union's leader in the mill (R. 14; 72, 95, 101). Gainey, accompanied by Hall, then went to the office of Superintendent Kale, where Gainey informed the superintendent that Hall, "one of our Union members," had been laid off and asked to have him put back to work (R. 14; 72–73, 95). Kale promised to look into the matter and communicate with them later (R. 14; 72–73, 95). Although Stowe was experiencing difficulty in obtaining doffers, neither Gainey nor

[1] Hall, who had taken this additional work upon himself to "help out" the doffers, had previously been told by Childers that "you are ruining your doffers by doing it" (R. 125–126).

[2] Kale admitted that as Gainey and Hall were leaving Hall said that "McCarn had told him he was laying him off on account of union activities" (R. 101).

Hall received further word from Kale (R. 14, 15; 102, 72, 95, 54).

A few days after Hall's employment was terminated, one of the spinners who had worked with him, asked Overseer McCarn whether Hall had left the mill. McCarn answered in the affirmative and added that he believed Hall was a union organizer and had been active in obtaining members for the Union. (R. 14; 97.)

Before the Board, Stowe contended that Hall voluntarily quit his job, and that, for this reason, the allegations of the complaint that Hall was discriminatorily discharged are unsupported by evidence. However, the evidence recited above (pp. 14–16) shows, and the Board found (R. 15), that Hall did not quit but was discharged by Stowe. Thus, both McCarn and Childers testified that, almost immediately after Hall stated that he would quit rather than continue "piecing up behind the doffers," Hall changed his mind, and declared that he would not quit but would remain until Stowe "fired" him (R. 15; 52, 111–112). McCarn testified that he refused to accept Hall's change of mind because "it was too late," and because "he felt * * * [he] would be better off without [Hall]" (R. 14; 53, 54). McCarn also testified that he "didn't want [Hall] back" (R. 15; 54).[13]

[13] In its petition (pp. 7–8), Stowe apparently contends that Hall never receded from his position that he would quit rather than continue to piece up behind the doffers. This contention

Moreover, although it was Stowe's usual practice to attempt to dissuade employees from leaving (R. 15; 102, 55), and the mill was short of doffers at the time (R. 15; 54, 102), Stowe not only made no effort to retain Hall but instead seized upon his declaration of intention to quit, ignored his change of mind, and effectively terminated his employment.

B. *George W. Gainey*, his wife *Mabel*, his daughter *Emma Louise* and a son Alfred, began to work for Stowe in February 1943 (R. 16; 63).[11] The work of all the Gaineys, except the son who is not directly involved in these proceedings, was regarded as satisfactory by Stowe (R. 17; 104). Mrs. Gainey was a better than average worker (R. 17; 74, 55). The Gaineys occupied one of the company-owned houses (R. 17; 63).

In December 1944, Gainey joined the Union and assumed leadership of the drive to unionize his fellow employees (R. 5; 63–70). He obtained

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ignores completely the testimony of Stowe's witnesses McCarn and Childers. Moreover, even if Hall had remained adamant on this point, his position would not have served to explain McCarn's action in discharging him. Piecing up behind doffers was not part of Hall's job (R. 94), and, indeed, he had previously been advised by Childers not to do it (R. 125–126). Stowe's assertion that Hall was discharged for his mere refusal to do that which his job did not require of him itself establishes that, at best, Stowe seized upon Hall's statement as a pretext, and that the real motive for his discharge lay elsewhere.

[11] Gainey was employed as a sweeper in the spooler room; his wife as a spinner; his daughter as a winder and his son as a doffer (R. 63).

numerous memberships for the Union and attended various union meetings (*ibid.*). It was at his request that the Union's national organizer came to North Belmont to assist in the drive (*ibid; supra,* pp. 6–7).

Stowe was fully aware of Gainey's activities in behalf of the Union (R. 18). In January, 1945, Overseer McCarn, in the course of a conversation with Gainey, told him that it was not necessary to have a union in the mill because the Government was fixing prices and wages. He then asked Gainey who the members of the Union were and asked whether certain specific individuals belonged. Gainey informed him that he and his family had joined the Union. (R. 16; 71, 76.) On February 10, when Hall was discharged, Gainey, as leader of the Union, undertook to request Superintendent Kale to reinstate him (*supra,* p. 15). In making the request, Gainey informed Kale that he was a member of the Union and that a substantial number of employees were also members (R. 14; 72–73). On February 24, two weeks after this occurrence, George Gainey, his wife and daughter were discharged (R. 17; 73–74).

The discharges occurred under the following circumstances:

On the day of the discharge, Overseer McCarn discharged a boy for not doing his work properly. Alfred Gainey, George Gainey's eighteen year old son, who is not a complainant in this case,

thereupon quit his job in protest against the other boy's discharge. (R. 17; 55–56.) McCarn, without communicating with the senior Gainey, immediately instructed Overseer Ballard to discharge all the other members of the Gainey family as they reported for work on the next shift (R. 17; 114, 57). Pursuant to these instructions, George, Mabel and Emma Louise Gainey were discharged that day. (R. 17; 73–74).

Before the Board, Stowe asserted that it was its practice to evict all members of a family from a company-owned house whenever one member ceased working for it (R. 17; 103, Tr. 311). It also asserted that since it was short of doffers, it was necessary to discharge the entire Gainey family, when Alfred, who was a doffer, quit, in order to make room for another doffer. (R. 17; 58).

These assertions were not sustained by the credible evidence. Except for its bare assertion that it was its policy to evict and dismiss all members of a family when one member quit, Stowe offered no evidence establishing the existence of such a policy.[15] And even assuming that it was Stowe's policy to regain possession of any of its

[15] Superintendent Kale was unable to recall a single instance where this alleged policy had been invoked by Stowe (R. 101). On the other hand, the record shows at least one instance where a member of a family quit but Stowe nevertheless permitted the family to continue occupying a company-owned dwelling and the other members of the family to continue working for it (R. 107–108).

houses whenever a member of the family occupying it quit its employ, this scarcely explains the summary dismissal of the three Gaineys. Not all of the employees of Stowe lived in company-owned houses. Some lived in the country and others in town (R. 17; Tr. 312, R. 108). In these circumstances, as the Board found, an employer, not prompted by a discriminatory purpose, would normally be expected to permit the Gaineys to continue working and to suggest that they seek other living quarters (R. 17). Stowe made no such reasonable suggestion; on the contrary, it dismissed the three Gaineys summarily and without affording them an opportunity to seek other quarters and at the same time continue working for Stowe. Finally, there is nothing in the record to show that it was necessary to evict the Gaineys in order to make room for another doffer to replace Alfred Gainey. No doffer had applied for work with Stowe nor was one awaiting employment when the Gaineys were dismissed (R. 17; 106).

C. *The Board's conclusions with respect to the discharge of Hall and the Gaineys.* On the basis of the foregoing evidence the Board found (R. 18–19) that Stowe discharged Hall and the Gaineys because of their union membership and activity.

The Board noted that Stowe had indicated its opposition to the Union when it refused to permit it to use the P. O. S. of A. hall (R. 18; *supra*, p. 10); that Overseer McCarn, who was immedi-

ately responsible for the dismissal of the four employees involved in these proceedings, had sought to deter the employees from joining the Union which he termed unnecessary (R. 19, *supra*, p. 18); and that both McCarn and Superintendent Kale, to whom Hall appealed unsuccessfully for reinstatement, were aware that Hall and George Gainey were the principal proponents of the Union in Stowe's mill (R. 18; *supra*, pp. 13, 15, 18).

These facts, coupled with the incredible excuses advanced by Stowe for the termination of their employment, led the Board to conclude that the four employees were discharged because of their membership in and activity on behalf of the Union, in violation of Section 8 (3) and (1) of the Act (R. 18–19).

The Board further found (R. 19) that the conduct of Overseer McCarn in interrogating George Gainey at length concerning the union membership of various employees while at the same time seeking to deter employees from joining the Union, constituted an additional violation of Section 8 (1) for which Stowe was responsible.

III. THE BOARD'S ORDER

On the basis of the foregoing findings the Board ordered Stowe Spinning Company, Acme Spinning Company, Perfection Spinning Company and Linford Mills, Inc., to cease and desist from refusing to permit the use of the P. O. S. of A. hall by their employees or by the Textile

Workers Union of America, C. I. O., or by any other labor organization for purposes of self-organization and collective bargaining; and upon request, to permit the hall to be used for such purposes and to post appropriate notices (R. 21–22). The Board also ordered Stowe Spinning Company to reinstate with back pay the four employees found to have been discriminatorily discharged, to cease and desist from discouraging membership in the Union by discriminatorily discharging any of its employees or by discriminating in any other manner in regard to their employment, to cease and desist from in any other manner interfering with, restraining or coercing its employees in the exercise of rights guaranteed in Section 7 of the Act, and to post appropriate notices (R. 21–23).

IV. THE DECISION IN THE COURT BELOW

On July 16, 1947, the Board filed in the court below a petition to enforce the Board's order (R. 129–136). On December 22, 1947, the court issued its opinion (R. 137–147), and on the same day entered its decree (R. 148–149), in which it set aside *in toto* the Board's order against Acme Spinning Company, Perfection Spinning Company and Linford Mills, Inc., and set aside the Board's order against Stowe Spinning Company insofar as it required Stowe to make the P. O. S. of A. hall available for self-organizational meetings. The court agreed with the Board's findings

that in refusing to sanction the use of the hall for a union meeting, the employers were motivated by a desire to impede unionization (R. 139–140), and were denying to the Union facilities which they regularly made available to all other groups and organizations (R. 139–141). The court rejected, however, the Board's conclusion that by exercising their property rights in this fashion the employers had violated Section 8 (1) of the Act. The court stated that although the refusal to grant use of the hall was "inspired by hostility to the union," since an employer is privileged in the exercise of the right of freedom of speech to oppose unionization "he may surely decline to perform an affirmative act which will encourage and assist a union in its organizational efforts" (R. 140). The court held that "There is no general provision of the Act which requires an employer to treat a labor union in the same manner as it treats other persons or organizations which are not concerned with the interests or activities of labor" (R. 139); "if the owners had freely given the use of the hall to the union as it had been given in the past to the patriotic order and to other social gatherings, it might well have been argued that an infraction of the statute had occurred", (R. 141). In the latter respect the court agreed with the dissenting Board member that if the employers had permitted the Union to use the hall, the employers would have risked a charge that

they had thereby violated Section 8 (2) of the Act (R. 141–142). It concluded that the Board's order violated the due process clause of the Fifth Amendment by compelling "the companies to surrender their other [than plant] property against their will for uses of which they did not approve" (R. 145, 142).

The court enforced the Board's order insofar as it requires Stowe Spinning Company to reinstate with back pay the four employees found to have been discriminatorily discharged, and to cease and desist from in any manner violating Section 8 (1) and (3) of the Act (R. 145–147).[16]

SPECIFICATION OF ERRORS TO BE URGED

1. The court below erred in holding that the Board's order requiring the employers to make the P. O. S. of A. hall available for union meetings deprives the employers of their property without due process of law.

2. The court below erred in holding that an employer may properly withhold from use by a labor organization a meeting hall which is available for use by all persons and organizations not engaged in labor activities.

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[16] Petitioner Stowe raises no question concerning the propriety of the Board's finding (R. 19), that it violated Section 8 (1) of the Act by its anti-union statements and by questioning employees concerning their union membership while seeking to induce them to refrain from joining the Union, or concerning the propriety of the provisions of the order based on this finding.

3. The court below erred in holding that in a company-town, the employer may, for the sole purpose of impeding a union's organizational efforts, deny to the union access to a hall which the employer owns, when the hall is the only sheltered place in town in which meetings can be conducted.

4. The court below erred in failing to enforce in full the order of the Board.

REASONS FOR GRANTING THE WRIT

1. The decision below is in conflict with the principle stated in the decisions of this Court in *Republic Aviation Corp.* v. *National Labor Relations Board*, and *National Labor Relations Board* v. *LeTourneau Co. of Georgia*, 324 U. S. 793. In those cases the Court upheld the power of the Board to remove certain impediments to the exercise of the rights of self-organization and collective bargaining guaranteed employees in Section 7 of the National Labor Relations Act, even though such impediments are imposed by employers through the exercise of their property rights. In the *Republic* case the employer prohibited employees from soliciting union membership in the plant on their own free time. 324 U. S. at pp. 794–795. In the *LeTourneau* case the employer prohibited employees from distributing union literature on employer-owned parking lots. 324 U. S. at pp. 796–797. In both cases the Board rejected the contention of the employers that their property rights were decisive of the validity of their re-

fusals to permit their premises to be used for union activities.[17] The Board assessed the impact of the restrictions imposed by the employers upon the opportunity for effective exercise of employee rights guaranteed by the Act, and, against this detriment to employee interests, balanced the employers' need for such restrictions to protect their legitimate interests. In both cases the Board concluded that, on balance, the employers' property interests were insufficient to justify the impediments upon union activity which flowed from the restrictions imposed by the employers on the use of their property by employees.

This Court upheld the power of the Board to work out in this manner an adjustment between the need of employees for "opportunity to organize" and the need of employers "to maintain discipline in their establishments". 324 U. S. at pp. 797–798. The Court held that since the Board had adequately explicated the reasoning which led it to conclude that the employees must be permitted to conduct the particular

[17] In its opinion in the *LeTourneau* case, 54 N. L. R. B. 1253, 1259, the Board quoted and relied upon the opinion of the Circuit Court of Appeals for the Second Circuit in *National Labor Relations Board* v. *Cities Service Oil Co.*, 122 F. 2d 149, 152: "It is not every interference with property rights that is within the Fifth Amendment and * * * Inconvenience, or even some dislocation of property rights, may be necessary in order to safeguard the right to collective bargaining." The paragraph of the Board's opinion containing this excerpt is quoted with approval in the Court's opinion in the *LeTourneau case*, 324 U. S. 793, 802, n. 8.

organizational activities there involved on the employers' property if they were to have adequate opportunity to exercise their self-organizational rights, and since the employers had shown no special circumstances by virtue of which the proposed employee activities on their property would have resulted in substantial injury to legitimate business interests, the Board's conclusions were proper.

As in the *LeTourneau* case, the Board in the instant case set forth in full the reasoning which led it to conclude that the employers' refusal to permit the P. O. S. of A. hall to be used for union meetings was an unwarranted and illegal interference with the statutory right of employees freely to assemble for purposes of discussing unionization (*supra,* pp. 10–12). The Board pointed out the importance of an appropriate and convenient meeting place to the success of employee organizational efforts and found that the employers' denial of the only available meeting place in the company-town tended to impede organizational efforts and thus imposed a detriment upon interests which the Act was designed to protect. The Board contrasted the effect of the employers' action upon the statutory right of the employees with the possible detriment to employer property interests which would flow from permitting the use of the hall for union meetings. It noted that the employers did not even claim that they would suffer any damage or inconvenience if

such use were permitted. They stood solely upon their bare property right to exercise complete dominion over premises which they owned; their right so to use their property as to frustrate the self-organizational efforts of their employees. The Board concluded that where, as here, denial of access to an employer-owned meeting hall results at least in substantial inconvenience to employees attempting to exercise their rights under the Act, and where such denial is not necessary to protect any legitimate property or business interests of the employer, the statute requires that access be permitted (R. 12).

The court below rejected the Board's conclusions and the reasoning upon which they were based. It ignored the impact of the denial of access to a meeting hall upon the opportunity of employees in the company-town to exercise their statutory rights. It concentrated exclusively on the property right of the employers in the meeting hall, and held that the Fifth Amendment barred the Board from requiring the employers "to surrender their * * * property against their will for purposes of which they did not approve" (R. 145, 142).

The court attempted to distinguish the *Republic* and *LeTourneau* cases, on the ground that "The conflict in the fundamental rights of the parties to labor disputes [in those cases] had little relation to the employer's property and caused little or no interference with its devotion to the pur-

poses of the owner" (R. 144).[18] The distinction is without substance. There is no claim and no showing in the instant case that if the Union had been permitted to hire the hall as it requested, the employers would have suffered even the slightest inconvenience or interference either with their business or with any uses which they desired to make of the hall. The Union offered to pay even more than the cost of the janitor's fee (R. 6; 79-80). There is no claim or showing that the Union was denied permission to use the hall because the time of the meeting was inappropriate, or because the meeting would have conflicted with any other scheduled activity. The Union was advised that it could not use the hall "under any circumstances" (*supra*, p. 9), and, as the Board found (R. 12), the only reason for the employers' refusal was their desire to impede employee self-organization. Moreover, the court below is in error with respect to the impact of the holding in the *LeTourneau* case upon the business interests of the employer. In that case the employer banned literature distribution of all kinds on the parking lots to avoid littering and pilfering from parked autos by distributors. 324 U. S. at p. 797. The Board, in its decision, did not deny that if distribution of

[18] The court stated that the union activities involved in the *Republic* and *LeTourneau cases*, "did not interfere substantially with the business of the employer, or inconvenience him at all" (R. 144).

union literature was permitted some littering might result. 54 N. L. R. B. at pp. 1261–1262. Requiring the employer to permit distribution of union literature on the parking lots, therefore, imposed upon the employer the alternative of making and enforcing a rule against littering or paying the cost of cleaning litter from the lots. This Court sustained the Board's holding that despite the detriment to employer property interests the necessity of affording adequate opportunities for the exercise of self-organizational rights required that permission be granted for the distribution of union literature on the parking lots.

The court below also attempted to distinguish the *Republic* and *LeTourneau* cases on the ground that there "The premises of the employer were necessarily occupied by the whole group of employees assembled to operate the business" (R. 144), and the case of *Marsh* v. *Alabama*, 326 U. S. 501, 506, in which the *Republic* case is cited with approval, on the ground that there the sidewalks "were freely used by the general public" (R. 143). To the extent that the court thus implied that there had been a dedication of the employer's property to employees in the *Republic* and *LeTourneau* cases, and to the public in the *Marsh* case, different in kind from the dedication of the P. O. S. of A. hall by the employers in this case, the court erred. In the *Marsh* case, this Court expressly refused to disturb the holding of the

Supreme Court of Alabama that the company had not dedicated its streets to the public, and that the Jehovah's Witness was therefore a trespasser thereon (326 U. S. at p. 505, n. 2). To the extent that there was dedication in the *Marsh* case, or in the *Republic* and *LeTourneau* cases, there was dedication in the instant case. The hall was erected in the first place for the convenience of employees, who were required, for the employers' advantage, to live in the company-town. Never, save in the case of the Union, had the employers objected to its use as a meeting place by groups composed of employees and non-employees. In this case the meeting hall was used by the employee-townsfolk no less freely than the streets in the *Marsh* case were used by the general public. Just as in the *Marsh* case the company objected not to the presence of the Jehovah's Witness on the street, but only to her activity there, so in this case the employers objected not to the presence of the group in the hall, but only to the purpose of their meeting.

The holding of the court below that Section 8 (2) of the Act tended to justify the employers' refusal to permit the Union to use the hall for a meeting, also conflicts with the ruling of this Court in the *LeTourneau* case. In that case the Circuit Court of Appeals for the Fifth Circuit similarly held (143 F. 2d 67, 68), that Section 8 (2) justified the employer in refusing to permit company-owned parking lots to be used as a

"theater" for self-organizational activities. The point was pressed in this Court by the employer [19] and was overruled *sub silentio*.

The decision below is also in conflict, we believe, with the decision of the Circuit Court of Appeals for the Sixth Circuit in *National Labor Relations Board* v. *Lake Superior Lumber Corp.*, No. 10410, decided April 5, 1948. In that case the court upheld the power of the Board to order an employer to permit union organizers to visit employees in bunkhouses owned by the employer, which were used by employees as sleeping quarters, where the employees lived in a lumber camp and, like the employees in the instant case, spent both their rest and work time on the employer's premises. Under such circumstances, as this Court pointed out in the *Republic* case, "union organization must proceed upon the employer's premises or be seriously handicapped" (324 U. S. at p. 799). In company-towns, meeting halls, no less than houses, are appurtenances to the employer's business operations.[20]

2. In another respect the decision below is in conflict with decisions of the United States Circuit Courts of Appeals for the Second, Fifth, Seventh, Eighth, and Tenth Circuits.[21] These

[19] See Brief for the LeTourneau Co., No. 452, October Term, 1944, pp. 19–20.

[20] Labine, Herbert J., *The Cotton Mill Worker* (Farrar & Rinehart, Inc., 1944), p. 51.

[21] *National Labor Relations Board* v. *Columbia Products Corp.*, 141 F. 2d 687, 688 (C. C. A. 2); *National Labor Rela-*

courts support the Board's view, enunciated in the *Peyton Packing* case, 49 N. L. R. B. 828, 843–844,[22] that restrictions upon union activity on an employer's premises which the employer may properly impose to protect legitimate business interests, are violative of Section 8 (1) of the Act if they are imposed for the purpose of impeding unionization. In the *Gallup American* case, *supra,* the Circuit Court of Appeals for the Tenth Circuit, without questioning the right of the employer to prohibit all displays of advertising on stone boulders located on his premises, held that the employer violated Section 8 (1) of the Act by prohibiting the painting of union signs on the boulders while permitting other types of advertising to be painted there. In the *Columbia Products* case, *supra,* the Circuit Court of Appeals for the Second Circuit, while conceding the right of the employer to make and enforce rules prohibiting employees from visiting other departments during lunch periods in the interests of plant discipline, held the application of such a rule to prevent an employee from visiting other departments for the purpose of electioneering for

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tions Board v. *Peyton Packing Co.*, 142 F. 2d 1009, 1010 (C. C. A. 5), certiorari denied, 323 U. S. 730; *National Labor Relations Board* v. *William Davies Co.*, 135 F. 2d 179, 181 (C. C. A. 7); *Carter Carburetor Corp.* v. *National Labor Relations Board*, 140 F. 2d 714, 716 (C. C. A. 8); *National Labor Relations Board* v. *Gallup American Coal Co.*, 131 F. 2d 665, 667 (C. C. A. 10).

[22] Quoted with approval in *Republic Aviation Corp.* v. *National Labor Relations Board*, 324 U. S. 793, 803–804, n. 10.

a labor organization was violative of the Act when the rule had never been enforced as to employees who visited other departments for any other purpose and when the employer's motive was not to maintain discipline but rather to impede unionization. In the *Peyton Packing, Davies,* and *Carter Carburetor* cases, *supra,* the Circuit Courts of Appeals for the Fifth, Seventh and Eighth Circuits held that plant rules prohibiting solicitation on company premises on the employee's own time, though otherwise unobjectionable, were, as applied to bar union solicitation, violative of the Act, because they were promulgated for the purpose of impeding unionization.

In the instant case the Board found that the employers' refusal to permit the P. O. S. of A. hall to be used for a union meeting was motivated by a design to impede unionization (R. 9, 12). The court below did not dispute this finding but held nevertheless that the employers had not thereby violated the Act. It stated: "An employer may * * * take any side in a labor controversy provided that his conduct does not amount to coercion; * * * and if an employer may exercise this freedom without violating the Act, he may surely decline to perform an affirmative act which will encourage and assist a union in its organizational efforts" (R. 140). This holding of the court below appears to be irreconcilable with the decisions of other circuits above referred to, *supra,* pp. 32–34.

3. The Board believes that the questions here presented are of importance in the administration of the Act. The decision below impairs the power of the Board to protect the opportunity of employees in company-towns throughout the land to exercise their statutory rights to self-organization and collective bargaining. Prior to the passage of the Act employers in company-towns frequently, as a means of frustrating unionization, refused to permit meeting halls in the town to be used for union activities.[23] It is important to the Board to know whether it is powerless to put an end to this practice.

ARGUMENT IN OPPOSITION TO THE PETITION IN NO. 676

Petitioner Stowe's contention that substantial evidence is lacking to support the Board's conclusion that Hall and the Gaineys were discharged for the purpose of discouraging union membership and activity presents no question of importance in the administration of the Act, and no conflict of decisions is shown. In any event, as the facts set forth in the *Statement* show, *supra*, pp. 13–21, and as the court below held (R. 145–147), the Board's conclusion is amply supported by the evidence.

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[23] Mitchell, George Sinclair, *Textile Unionism and the South* (University of North Carolina Press, 1931), p. 84; Fitch, John A., *The Causes of Industrial Unrest* (Harper & Bros., 1924), pp. 189–191, 197.

CONCLUSION

The question presented in the Board's petition for a writ of certiorari is of substantial public importance. The manner in which the court below decided this question conflicts with decisions of this Court and with decisions of other Circuit Courts of Appeals. It is respectfully submitted that the Board's petition for a writ of certiorari in No. 757 be granted, and that the petition for a writ of certiorari in No. 676 be denied.

PHILIP B. PERLMAN,
Solicitor General.

ROBERT N. DENHAM,
General Counsel,
National Labor Relations Board.

APRIL 1948.

APPENDIX

The pertinent provisions of the National Labor Relations Act (Act of July 5, 1935, 49 Stat. 449, 29 U. S. C. 151 *et seq.*) are as follows:

SEC. 1.

* * * * *

It is hereby declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.

* * * * *

SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection.

SEC. 8. It shall be an unfair labor practice for an employer—

(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.

* * * * *

(3) By discrimination in regard to hire or tenure of employment or any term or

condition of employment to encourage or discourage membership in any labor organization * * *.

* * * * *

SEC. 10.

* * * * *

(c) * * * If upon all the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this Act. * * *

* * * * *

(e) * * * The findings of the Board as to the facts, if supported by evidence, shall be conclusive.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1943

NATIONAL LABOR RELATIONS BOARD, *Petitioner*,

v.

STOWE SPINNING COMPANY, ARNIL SPINNING COMPANY, PEPPERELL MANUFACTURING COMPANY AND LINDSLEY MILLS, INC.

ON WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS OF THE FOURTH CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1948

No. 46.

NATIONAL LABOR RELATIONS BOARD, *Petitioner*,

v.

STOWE SPINNING COMPANY, ACME SPINNING COMPANY, PERFECTION SPINNING COMPANY AND LINFORD MILLS, INC.

On Writ of Certiorari to the Circuit Court of Appeals for the Fourth Circuit

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BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

OPINIONS BELOW

The opinion of the court below (R. 137-147), is reported in 165 F. 2d 609. The findings of fact, conclusions of law, and order of the Board (R. 1-26), are reported in 70 N. L. R. B. 614.

JURISDICTION

The decree of the court below was entered on December 22, 1947 (R. 148-149). The petition for a writ of certiorari was granted on June 1, 1948.[1] The jurisdiction of this Court was invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925 now 28 U. S. C. 1254, and Section 10 (e) and (f) of the National Labor Relations Act.

QUESTION PRESENTED

The employers, owners of a company-town, maintain a hall for the convenience of employee-residents and others which is the only place in the community appropriate for group meetings. Because of their hostility to unionization and their desire to impede self-organizational efforts among the employee-residents, the employers denied to a labor organization permission to use the hall for a union meeting. The question presented is whether, in the circumstances of this case, the Board could properly find that the employers, by such denial of the use of the hall, interfered with the exercise of the rights guaranteed employees under Section 7 of the Act, in violation of Section 8 (1).

[1] On the same date this Court denied the petition of Stowe Spinning Company for certiorari to review the judgment of the court below insofar as it enforced the Board's order requiring the Company to reinstate with back pay four employees found by the Board to have been discriminatorily discharged. No. 676, October Term, 1947.

STATUTE INVOLVED

The pertinent provisions of the National Labor Relations Act (Act of July 5, 1935, c. 372, 49 Stat. 449, 29 U. S. C. 151, *et seq.*) are set forth in the Appendix, infra, pp. 41-42.[2]

STATEMENT

Upon the usual proceedings under Section 10 of the Act, the Board, on August 26, 1946, issued its findings of fact, conclusions of law and order (R. 1-26). The pertinent facts, as found by the Board and as shown by the evidence, may be summarized as follows:[3]

Stowe Spinning Company, Acme Spinning Company, Perfection Spinning Company, and Linford Mills, are four North Carolina corporations, with interlocking directorships, hereinafter collectively referred to as the employers, each of which operates a cotton spinning mill in the unincorporated village of North Belmont, North Carolina (R. 3-5; 28, 30-31).[4] The employers own a large number of houses adjacent to their respective mills which they

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[2] The question here presented is not affected by the amendments to the National Labor Relations Act enacted in the Labor Management Relations Act of 1947 (61 Stat. 136, 29 U. S. C., Supp. I, 141, *et seq.*).

[3] In the following statement record references preceding the semicolon are to the Board's findings; succeeding references are to the supporting evidence.

[4] Geographically, North Belmont is located two and a half miles from the City of Belmont, North Carolina (R. 4; 29).

rent to employees and their families (R. 4; 29, 31-32, 34, 102).[5] These groups of houses, called "mill villages," together with the employers' mills, comprise North Belmont (R. 4; 29). The town is policed by a deputy sheriff who is paid by the employers (R. 4; 36-37, 38).

There are only three buildings of a more or less public nature in the town. One is a public school building, owned by the state, but controlled by a school board composed entirely of officers of the employers (R. 4, 8; 32, 114-115). Another is a motion picture theater, owned and controlled by the employers jointly, but operated by a lessee (R. 4, 8; 32-33, 37, 84, 109-110). The third building, known as the P. O. S. of A. Building—the initials denoting the Patriotic Order Sons of America—is likewise owned and controlled by the employers and houses a United States Post Office and a grocery store on the first floor, and an assembly or meeting hall, seating approximately two hundred persons, on the second (R. 5; 33-42). This building was erected by the employers in 1937 to provide shopping facilities and a meeting place for the convenience of the employee-villagers, who, by virtue of their employment in the community, were isolated from other public facilities (R. 8, 10; 35, 38).[6]

[5] Acme owns about 158 such houses, Stowe 100, Linford and Perfection each own about 75 houses (R. 4; 34).

[6] Prior to the erection of the building in 1937, a group of employees, representing a fraternal order, known as the

Control and rental of the P. O. S. of A. building is vested in an agent of the employers, D. P. Stowe (R. 4, 5; 30, 100). However, officers of the P. O. S. of A. were permitted in practice to exercise full control over the use of the hall, and they gave permission to other organizations and groups to use the hall upon request, without interference by the employers (R. 9; 43-44, 45, 48). The hall was used not only for meetings of the fraternal order but also, on numerous occasions, for other community and employee activities, such as church banquets, Ladies Aid Society meetings, Christmas parties for school children, and to house a safety school conducted by the employers for their employees. (R. 9; 43-44).

In December 1944, the companies' employees began to organize and sought the assistance of the Textile Workers Union of America, affiliated with

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Patriotic Order Sons of America, or P. O. S. of A., of which many of the employers' employees were members, attempted to purchase the land from the employers for the purpose of erecting such a building which could be used for meetings of the order, and other types of meetings (R. 48, 35, 38, 40-41). The employers advised the group that they planned to build a building containing a post office and stores on the site, and offered to add an additional story to the structure which could be used by the P. O. S. of A. as a meeting hall (*ibid.*). The hall was to be made available rent free, since, as a representative of the employers testified at the hearing, "the revenue from those stores would take care of the expenses of the building" (R. 35, 48). Before the building was erected meetings of the fraternal order were held in the schoolhouse auditorium (R. 8; 42, 48).

the C. I. O., hereinafter called the Union (R. 4, 5; 78). Shortly thereafter, at the request of George W. Gainey, a Stowe employee who had assumed leadership of the organizational drive,[1] Robert Harris, a national representative of the Union, arrived in North Belmont to arrange a mass meeting of Stowe employees (R. 5-6; 77-78). After conferring with Gainey and others as to convenient places in town for holding such a meeting, Harris approached O. R. Stewart, an official of P. O. S. of A., for the purpose of obtaining the use of the P. O. S. of A. hall (R. 6; 45-46, 48, 78-79). Stewart referred him to President Black of the P. O. S. of A. (*ibid.*). On January 22, 1945, Harris went to Black and, after identifying himself as a representative of the Union, asked for permission to use the hall on the following Sunday in order that the employees of Stowe might meet and complete their union organizing campaign. Black informed Harris that the Union could use the hall and requested the payment of a nominal sum for the janitor's fee. Harris offered to pay more and Black left the matter to him. When Harris stressed the importance of a definite commitment for the use of the hall because leaflets announcing the meeting place had to be prepared and distributed, Black assured him that

[1] Gainey was, as the Board and the court below found, subsequently discharged because of his union activities. His discharge is not an issue in this proceeding.

he was head of the lodge and his word was final. (R. 6; 79-80.) Harris thereupon had leaflets mimeographed and distributed inviting Stowe employees to attend a union meeting at the P. O. S. of A. hall on Sunday, January 28 (R. 6; 80, 116).

On January 23, Stewart asked Black what he had done about Harris' request for use of the P. O. S. of A. hall. When Black informed him that he had given Harris permission to use the hall, Stewart replied, "You shouldn't have done it for he ain't nothing but a Textile organizer". (R. 6-7; 46.) Black then reported the matter to Superintendent Cauble of the Acme mill (R. 7; 46). Cauble instructed him to do nothing further until Cauble had conferred with the "officials" at Belmont (R. 7; 46). Later that day, Cauble notified Black that D. P Stowe, the employers' agent in charge of the P. O. S. of A. building, would communicate with Stewart that evening (R. 7; 46). Thereafter Stewart was summoned to D. P. Stowe's office (R. 7; 49).[5] D. P. Stowe informed Stewart that the employers had built the P. O. S. of A. hall as a place for meetings of that organization and "meetings of that type" and if any other meetings were to be held there, "we were to make the arrangements here." When D. P. Stowe asked

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[5] J. Harold Litteberger, a ranking officer of the Perfection, Linford and Acme Companies, was also present at this interview (R. 4; 30, 49).

Stewart why he had given Harris permission to hold a meeting there, Stewart answered that Black, who had referred Harris to him, did not know the latter was a union organizer. Stowe thereupon instructed Stewart to inform Harris that "the building would not be available." (R. 7; 49-50.)

On January 26, after the leaflets announcing that a union meeting would be held in the P. O. S. of A. hall had been distributed, Black, on instructions from Stewart, notified Harris that he had received orders from D. P. Stowe not to permit the Union to use the hall "under any circumstances" (R. 7; 49, 81). Harris then sought to obtain permission to use the schoolhouse from J. W. Miller, who was chairman of the School Board and also superintendent of the Perfection Mill (R. 7-8; 82-83, 114). Miller told Harris that it was impossible to heat the schoolhouse because of a shortage of coal. When Harris stated that a fire was unnecessary, Miller informed him that D. P. Stowe had issued instructions not to permit the Union to use the schoolhouse for its meeting. (R. 7-8; 82-83.) Harris then sought permission to use the theater, also owned by the employers, for the meeting, but was informed by the manager that he was not permitted to allow the use of the theater for any purpose other than the showing of pictures (R. 8; 84). Frustrated in their efforts to find a sheltered meeting place in the town, the employees held the school

nied meeting on the street outside the P. O. S. of A. building (R. 7; 81).[9]

The Board found that in view of the employers' practice of permitting the hall to be used by all other groups and organizations, their refusal to allow its use for organizational purposes "constituted unlawful disparity of treatment and discrimination against the Union" (R. 9). It further found on the basis of the foregoing facts, together with its findings (R. 18-19) that Stowe Spinning Company had discriminatorily discharged four employees for the purpose of discouraging membership in and activity on behalf of the Union,[10] and had interfered with the self-organizational freedom of the employees in violation of Section 8 (1) by interrogating employees concerning their union membership while seeking to dissuade them from joining the union (R. 19),[11] that the "sole pur-

[9] Because of the unavailability of indoor meeting places no further union meetings have been held in North Belmont (R. 85-86).

[10] These findings were sustained by the court below (R. 145-147), which decreed enforcement of the Board's order requiring reinstatement of the discharged employees with back pay. They are not open to challenge in this case, this Court having denied certiorari to review the question whether these findings are supported by substantial evidence, note 1, *supra*.

[11] The Company did not seek certiorari to review this finding of the Board. See Brief for the National Labor Relations Board in Opposition, No. 656, October Term, 1947, p. 21, note 16.

pose" of Stowe's withdrawal, on behalf of the employers, of permission to use the hall for a union meeting, "was to impede, prevent and discourage self-organization and collective bargaining by the [companies'] employees within the meaning of Section 7 of the Act" (R. 12).

The Board, as an alternative ground for its decision, concluded that under the circumstances of this case, irrespective of the employers' motive (R. 12),

> by refusing to permit their employees to exercise the right to meet on company-owned property for the purpose of holding a union meeting, when no other suitable property in the community was available for the purpose, the [employers] have placed an unreasonable impediment on freedom of communication and of assembly essential to the exercise of employees' rights guaranteed by Section 7 of the Act. By their conduct in revoking the grant of the privilege to use the hall and thus denying the use of the hall to the Union, the [employers] interfered with, restrained and coerced their employees in the exercise of the rights guaranteed in Section 7 of the Act, in violation of Section 8 (1) thereof.

In support of this conclusion the Board pointed out (R. 10):

> The "right to self-organization" is more than an intangible concept. The history of labor organization has established a pattern of

> methods almost universally utilized by employees in self-organization, deprivation of any one of which makes inroads upon the "right." Foremost among these methods is the general meeting,* the *sine qua non* of all true collective action, the basic constitutional right of peaceable assembly. * * * by refusing to permit the Union to use the only available meeting place in the community, a hall erected and used by the [employers] for the benefit of citizens isolated from other public facilities by virtue of their employment in the community, the [employers] in fact deprived their employees of this basic right. The [employers] do not claim that "inconvenience" or "dislocation of property rights" would result from the Union's use of its property.* Indeed, no reason at all was offered by the [employers'] agent Stowe for countermanding Black's grant of permission to Harris to use the hall. Against the bare property right urged by the [employers] the necessity of the employees for a place to hold an organizational meeting clearly preponderates.*

The Board rejected the contention, advanced in the opinion of the dissenting member of the Board (R. 23-24), that the employers were required to deny permission to the Union to use the hall for a meeting by virtue of the provisions of Section 8 (2) of the Act which prohibit an employer from granting "support" to a labor organization (R. 11-12).

*Footnotes omitted.

The Board stated that, "in a company town, where all meeting facilities are owned by the employer, the use of such facilities by a labor organization is necessary if the employees are really to be free to exercise their rights under the Act," (R. 11), and consequently, under such circumstances, the mere grant of a meeting place to a union by an employer would not in and of itself constitute unlawful assistance to that union (R. 11). The Board pointed out that this was particularly true where, as here, the Union offered to pay for the hall (R. 11-12).[12]

On the basis of the foregoing findings the Board ordered Stowe Spinning Company, Acme Spinning Company, Perfection Spinning Company and Linford Mills, Inc., to cease and desist from refusing to permit the use of the P. O. S. of A. hall by their employees or by the Textile Workers Union of America, C. I. O., or by any other labor organization for purposes of self-organization and collective bargaining; and upon request, to permit the hall to be used for such purposes and to post appropriate notices (R. 21-22).

On July 16, 1947, the Board filed in the court below a petition to enforce the Board's order (R. 129-136). On December 22, 1947, the court issued

[12] In this connection the Board (R. 12, n. 18) referred to its decision in *Matter of Standard Oil Company of California*, 61 N. L. R. B. 1251, 1284, n. 56, in which it approved the use of an employer owned hall by a labor organization for regular meetings where the labor organization paid a nominal amount yearly for such use.

its opinion (R. 137-147), and on the same day entered its decree (R. 148-149), in which it set aside the Board's order against Acme Spinning Company, Perfection Spinning Company and Linford Mills, Inc., and set aside the Board's order against Stowe Spinning Company insofar as it required Stowe to make the P. O. S. of A. hall available for self-organizational meetings. The court agreed with the Board's findings that in refusing to sanction the use of the hall for a union meeting, the employers were motivated by a desire to impede unionization (R. 139-140), and were denying to the Union facilities which they regularly made available to all other groups and organizations (R. 139-141). The court rejected, however, the Board's conclusion that by exercising their property rights in this fashion the employers had violated Section 8 (1) of the Act. The court stated that although the refusal to grant use of the hall was "inspired by hostility to the union," since an employer is privileged in the exercise of the right of freedom of speech to oppose unionization "he may surely decline to perform an affirmative act which will encourage and assist a union in its organizational efforts" (R. 140). The court held that "There is no general provision of the Act which requires an employer to treat a labor union in the same manner as it treats other persons or organizations which are not concerned with the interests or activities of labor" (R. 139); "if the owners had freely given

the use of the hall to the union as it had been given in the past to the patriotic order and to other social gatherings, it might well have been argued that an infraction of the statute had occurred" (R. 141). In the latter respect the court agreed with the dissenting Board member that if the employers had permitted the Union to use the hall, the employers would have risked a charge that they had thereby violated Section 8 (2) of the Act (R. 141-142). It concluded that the Board's order violated the due process clause of the Fifth Amendment by compelling "the companies to surrender their other [than plant] property against their will for uses of which they did not approve" (R. 145, 142).

SPECIFICATION OF ERRORS TO BE URGED

The court below erred:

1. In holding that the Board's order requiring the employers to make the P. O. S. of A. hall available for union meetings deprives the employers of their property without due process of law.

2. In holding that an employer may properly withhold from use by a labor organization a meeting hall which is available for use by all persons and organizations not engaged in labor activities.

3. In holding that in a company-town, the employer may, for the sole purpose of impeding a union's organizational efforts, deny to the union access to a hall which the employer owns, when the

hall is the only sheltered place in town in which meetings can be conducted.

4. In setting aside and denying enforcement to the Board's order.

SUMMARY OF ARGUMENT

I

In the *Republic* and *Le Tourneau* cases, 324 U. S. 793, this Court held that unreasonable restrictions upon the exercise of self-organizational rights, when imposed by employers through their control over property, were violative of the Act. In the instant case the Board found that the employers, who owned the only sheltered meeting place in the company town and permitted its use for all other types of meetings, by refusing to permit the hall to be used for a union meeting unreasonably restricted the opportunity of employees to meet freely for the purpose of discussing unionization and perfecting organization.

The Board's conclusion that the restriction imposed by the employers was unreasonable rests upon a balancing of the detriment to the statutory interests of employees which flows from the restriction, against the need for such restriction to protect legitimate employer interests, an approach approved in the *Republic* and *Le Tourneau* cases. In the instant case the restriction upon the use of the meeting hall was tantamount to denial to the employees of all opportunity to discuss unionization

in public assembly. Moreover, since the employers freely permitted the hall to be used for all other types of meetings, here, unlike the *Republic* and *Le Tourneau* cases, the employers do not even claim that the restriction is necessary to protect legitimate business or property interests, or that removal of the restriction would result in any inconvenience, risk or damage to them.

In setting aside the Board's order the court below held that the restriction imposed by the employers was not subject to challenge by the Board since the restriction was imposed as an incident of the employers' ownership of their property, and, as such, was beyond the bounds of legislative regulation. In the *Republic* and *Le Tourneau* cases, however, and in innumerable others, this Court has held that the due process clause does not immunize property rights from reasonable legislative regulation. Here, as in *Marsh* v. *Alabama*, 326 U. S. 501, 505-506, the necessity of protecting the rights of others affords ample basis for circumscribing the unfettered mastery which the employer-owner of a company town may exercise over his property.

II

Employer restrictions upon self-organizational activity of employees which are imposed not to protect legitimate business or property interests, but solely to hamper unionization, infringe both the letter and the spirit of the Act. Restrictions so

motivated have, therefore, been held to violate the Act in every case except this one. Here the employers, while permitting the hall to be used for all other types of meetings, barred its use for a union meeting solely because of their opposition to the exercise of organizational rights by the employees. The employers' discriminatory interference with the Union's use of the hall for a meeting was part of a course of conduct, including the discriminatory discharge of four employees, which was designed to and did frustrate the employees' self-organizational efforts. Such exercise of property rights to interfere with the statutory rights of others cannot be deemed to comport with the statute.

ARGUMENT

THE BOARD PROPERLY FOUND THAT BY REFUSING TO PERMIT THE MEETING HALL TO BE USED FOR UNION MEETINGS THE EMPLOYERS INTERFERED WITH THE EXERCISE OF RIGHTS GUARANTEED EMPLOYEES IN SECTION 7 AND THEREBY VIOLATED SECTION 8 (1) OF THE ACT

I. The Board Properly Found That by Foreclosing Access to the Only Sheltered Meeting Place in Town the Employers Imposed an Unreasonable Impediment on the Exercise of Self-Organizational Rights Guaranteed in Section 7 of the Act

In *Republic Aviation Corp.* v. *National Labor Relations Board*, and *National Labor Relations Board* v. *LeTourneau Co. of Georgia*, 324 U. S. 793, this Court recognized that the right to self-organization guaranteed employees in Section 7 of the National Labor Relations Act comprehends the

right to solicit membership in labor organizations and to distribute union literature. In *Thomas* v. *Collins*, 323 U. S. 516, 533, the Court pointed out that the right guaranteed by Section 7, "to organize freely for collective bargaining * * * comprehends whatever may be appropriate and lawful to accomplish and maintain such organization." The Court specifically noted in that case (323 U. S. at p. 534), that the right of employees "fully and freely to discuss and be informed concerning [their] choice [of bargaining representatives], privately or in public assembly," is included within the guarantees of Section 7, as is the necessarily correlative right of union officials "to discuss with and inform the employees concerning matters involved in their choice."

In the *Republic* and *LeTourneau* cases, *supra*, this Court held that Section 8 (1) of the Act prohibits employer interference with the rights guaranteed in Section 7 where such interference takes the form of unreasonably restricting opportunity for their exercise. In those cases, as in this case, impediments to the exercise of self-organizational rights by employees were imposed by employers through the exercise of their property rights.

In the *Republic* case the employer prohibited employees from soliciting union membership in the plant on their own free time. 324 U. S., at pp. 794-795. In the *LeTourneau* case the employer prohibited employees from distributing union litera-

ture on employer-owned parking lots. 324 U. S., at pp. 796-797. In both cases the Board rejected the contention of the employers that their property rights were decisive of the validity of their refusals to permit their premises to be used for union activities.[13] The Board assessed the impact of the restrictions imposed by the employers upon the opportunity for effective exercise of employee rights guaranteed by the Act, and, against this detriment to employee interests, balanced the employers' need for such restrictions to protect their legitimate interests. In both cases the Board concluded that, on balance, the employers' property interests were insufficient to justify the impediments upon union activity which flowed from the restrictions imposed by the employers on the use of their property by employees.

This Court upheld the power of the Board to work out in this manner an adjustment between the need of employees for "opportunity to organize" and the need of employers "to maintain discipline

[13] In its opinion in the *LeTourneau* case, 54 N. L. R. B. 1253, 1259, the Board quoted and relied upon the opinion of the Circuit Court of Appeals for the Second Circuit in *National Labor Relations Board* v. *Cities Service Oil Co.*, 122 F. 2d 149, 152: "It is not every interference with property rights that is within the Fifth Amendment and * * * Inconvenience, or even some dislocation of property rights, may be necessary in order to safeguard the right to collective bargaining." The paragraph of the Board's opinion containing this excerpt is quoted with approval in the Court's opinion in the *LeTourneau case*, 324 U. S. 793, 802, n. 8.

in their establishments". 324 U. S., at pp. 797-798. The Court held that since the Board had adequately explicated the reasoning which led it to conclude that the employees must be permitted to conduct the particular organizational activities there involved on the employers' property if they were to have adequate opportunity to exercise their self-organizational rights, and since the employers had shown no special circumstances by virtue of which the proposed employee activities on their property would have resulted in substantial injury to legitimate business interests, the Board's conclusions were proper.

As in the *LeTourneau* case, the Board in the instant case set forth in full the reasoning which led it to conclude that the employers' refusal to permit the P. O. S. of A. hall to be used for union meetings was an unwarranted and illegal interference with the statutory right of employees freely to assemble for purposes of discussing unionization (*supra*, pp. 10-11).

The Board found (*supra*, p. 11), as this Court had earlier noted in *Thomas v. Collins, supra*, p. 18, that discussion of questions of unionization at public meetings is an indispensable attribute of the right to self-organization. It further found (*supra*, p. 11), that without access to an appropriate and convenient sheltered meeting place, opportunity for public discussion among employees of the questions involved in unionization

is drastically curtailed; and the right to self-organization is *pro-tanto* frustrated. The Board noted that the companies controlled the only available meeting places in the company-town; that the P. O. S. of A. hall was itself erected and used by the companies for the benefit of the employee-residents, who were isolated from other meeting places by virtue of their employment in the community; and concluded that by denying to employees the use of the only appropriate sheltered meeting place in the community for discussion of unionization the employers had impeded the exercise of rights guaranteed by the Act and thus imposed a detriment upon interests which the Act was designed to protect.

The Board contrasted the effect of the employers' action upon the opportunity of the employees to exercise their statutory rights with the possible detriment to employer property interests which would flow from permitting the use of the hall for union meetings. It noted that the employers did not even claim that they would suffer any damage or inconvenience if such use were permitted. They stood solely upon their bare property right to exercise complete dominion over premises which they owned, upon their right so to use their property as to frustrate the self-organizational efforts of their employees. The Board concluded that where, as here, denial of access to an employer-owned meeting hall results at least in substantial inconvenience to employees attempting

to exercise their rights under the Act, and where such denial is not necessary to protect any legitimate property or business interests of the employer, the statute requires that access be permitted (R. 12).

The Board's decision, we submit, accords completely with the guiding principles enunciated by this Court in the *Republic* and *LeTourneau* cases. Indeed, this Court's opinion in those cases recognized that a case involving a company town, such as we have here, would have been an even stronger one for the Board. In those cases, the Court pointed out (324 U. S., at p. 798), there was neither evidence nor a finding that the use of the employer's property was necessary to the effective accomplishment of the particular union activities there involved. Neither case, said the Court (324 U. S., at p. 799), "is like a mining or lumber camp where the employees pass their rest as well as their work time on the employer's premises, so that union organization must proceed upon the employer's premises, or be seriously handicapped."

In the instant case, on the other hand, the Board found (*supra*, pp. 10-11), that because the only sheltered meeting places in the community were company-owned, and because the employees were isolated from other public facilities by virtue of their employment in the company-town, the denials of access to the P. O. S. of A. meeting hall was tan-

tamount to denial to them of all opportunity to discuss unionization in public assembly. And the evidence shows that after holding the meeting of January 28, which had been scheduled for the P. O. S. of A. hall, on the street in front of the building, the union has held no further meetings in North Belmont (*supra*, p. 9, n. 9). Denial of access to a meeting place has thus frustrated the exercise of organizational rights by the employees of these employers. Surely, under these circumstances, where denial of access to a meeting hall results in practice in denial to employees of their rights under the Act, the denial of access can be supported, if at all, only upon a showing that to permit the hall to be used for union meetings would endanger important legitimate business or property interests of the employer. See *Republic Aviation Corp.* v. *National Labor Relations Board*, 142 F. 2d 193, 196 (C. C. A. 2), affirmed, 324 U. S. 793, 798; *National Labor Relations Board* v. *Lake Superior Lumber Corp.*, 167 F. 2d 147, 151-152 (C. C. A. 6). Yet in the instant case, again unlike the *Republic* and *LeTourneau* cases (see p. 27, *infra*), the employers do not even claim that they would suffer any inconvenience, loss or damage to their business or property interests if access to the P. O. S. of A. hall for the purpose of union meetings were permitted.

The court below, however, refused to test the Board's decision in the instant case by the stand-

ards laid down in the *Republic* and *LeTourneau* cases. Instead, the court found support in the decision of this Court in *National Labor Relations Board v. Virginia Electric & Power Co.*, 314 U. S. 469, holding that employers may, absent coercion, exercise their right to freedom of speech on any side of a labor problem or controversy, for the conduct of the employers in refusing to permit their property to be used for union meetings, since such use would, contrary to the employers' desires, "encourage and assist a union in its organizational efforts" (R. 140). The flaw in the analogy thus drawn by the court below between opposition to unionization effectuated through the exercise of the employer's right to freedom of speech, and frustration of self-organizational efforts effectuated through the exercise of the employer's control over property, lies in the failure to observe the distinction, often and uniformly drawn by this Court, between the civil liberties explicitly safeguarded by the First Amendment on the one hand and rights which arise from the ownership of property on the other. Freedom of speech, as the cases hold, is entitled to greater protection from legislative regulation than any claim of unfettered right to do as one wills with one's property. To equate the employer's right to freedom of speech with his right to exercise absolute dominion over property is no more valid than to classify "the privileges protected by the First Amendment along with the

wares and merchandise of hucksters and peddlers and treat * * * them all alike." *Murdock* v. *Pennsylvania*, 319 U. S. 105, 115.

That property rights are subject to reasonable legislative regulations which to some extent may impair the owner's dominion over his property is established, *inter alia*, by the *Republic* and *LeTourneau* cases themselves, for the employers there also relied on their right to unrestricted control of their property. The due process clause does not immunize the right to deal with physical property from limitations contained in reasonable legislative regulations pursuant to valid constitutional powers, as many cases attest. *Euclid* v. *Ambler Realty Co.*, 272 U. S. 365; *Block* v. *Hirsh*, 256 U. S. 135; *Marcus Brown Co.* v. *Feldman*, 256 U. S. 170; *Hamilton* v. *Kentucky Distilleries Co.*, 251 U. S. 146; *Woods* v. *Miller Co.*, 333 U. S. 138; *Champlin Refining Co.* v. *Corporation Commission*, 286 U. S. 210; *Sunshine Anthracite Coal Co.* v. *Adkins*, 310 U. S. 381; *North American Co.* v. *Securities & Exchange Commission*, 327 U. S. 686; *United States* v. *Carolene Products Co.*, 304 U. S. 144; *Carolene Products Co.* v. *United States*, 323 U. S. 18. In sustaining the National Labor Relations Act, as well as the Railway Labor Act, this Court held that Congress was empowered to prohibit employers from exercising their property rights and dominion over jobs in such fashion as to interfere with the self-organizational freedom of employees.

National Labor Relations Board v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1, 33-34; *Texas & N. O. R. Co.* v. *Brotherhood of Railway Clerks*, 281 U. S. 548, 570-571. Here, as we have seen, there was no actual effect upon the value of respondent's property; indeed the union was willing to pay for its use of the hall.

The court below attempted to distinguish the *Republic* and *LeTourneau* cases on the ground that "The conflict in the fundamental rights of the parties to labor disputes [in those cases] had little relation to the employer's property and caused little or no interference with its devotion to the purposes of the owner" (R. 144).[14] The distinction is without substance. There is no claim and no showing in the instant case that if the Union had been permitted to hire the hall as it requested, the employers would have suffered even the slightest inconvenience or interference either with their business or with any uses which they desired to make of the hall. The Union offered to pay even more than the cost of the janitor's fee (R. 6; 79-80). There is no claim or showing that the Union was denied permission to use the hall because the time of the meeting was inappropriate, or because the meeting would have conflicted with any other scheduled ac-

[14] The court below stated that the union activities involved in the *Republic* and *LeTourneau* cases, "did not interfere substantially with the business of the employer, or inconvenience him at all" (R. 144).

tivity. The Union was advised that it could not use the hall "under any circumstances". (*supra*, p. 9), and, as the Board found (R. 12), the only reason for the employers' refusal was their desire to impede employee self-organization.

Moreover, the court below is in error with respect to the impact of the holding in the *LeTourneau* case upon the business interests of the employer. In that case the employer banned literature distribution of all kinds on the parking lots to avoid littering and pilfering from parked autos by distributors. 324 U. S., at p. 797. The Board, in its decision, did not deny that if distribution of union literature was permitted some littering might result. 54 N. L. R. B., at pp. 1261-1262. Requiring the employer to permit distribution of union literature on the parking lots, therefore, imposed upon the employer the alternative of making and enforcing a rule against littering or paying the cost of cleaning litter from the lots. This Court sustained the Board's holding that despite the detriment to employer property interests the necessity of affording adequate opportunities for the exercise of self-organizational rights required that permission be granted for the distribution of union literature on the parking lots. Since there was some detriment to the employer in *LeTourneau* but none to the employer here, affirmance of the Board's order here follows *a fortiori* from this Court's *LeTourneau* decision.

Recognition of competing constitutional and statutory rights of others often marks a limit to the absolute dominion of a property owner. *Shelley v. Kraemer*, 334 U. S. 1. Particularly is this true where, as in this case, the dominion of the property owner extends to an entire town, and places him astride the channels of communication and assembly available to a whole community of citizens. In *Marsh v. Alabama*, 326 U. S. 501, this Court held that a state violated the Constitution by punishing criminally a Jehovah's Witness who, contrary to the command of the corporation which owned a company town, utilized the streets of the town for the purpose of distributing religious literature. In response to the contention that the state's action was valid because the corporation, in the exercise of its property rights over the streets, could limit their use to purposes of which it approved, the Court said (326 U. S., at pp. 505-506, 509):

> We do not agree that the corporation's property interests settle the question. * * * Ownership does not always mean absolute dominion. The more an owner, for his advantage, opens up his property for use by the public in general, the more do his rights become circumscribed by the statutory and constitutional rights of those who use it. Cf. *Republic Aviation Corp. v. Labor Board*, 324 U. S. 793, 798, 802, n. 8.

* * *

> When we balance the Constitutional rights of owners of property against those of the people to enjoy freedom of press and religion . . . we remain mindful of the fact that the latter occupy a preferred position.

The citation of the *Republic* case in the *Marsh* case, we believe, imports recognition that the limitations imposed by the National Labor Relations Act upon the property rights of employers in behalf of the exercises by employees of the rights of freedom of speech, press and assembly, where self-organizational matters are involved, are analogous to the limitations imposed by the Constitution upon state and federal governments in behalf of the civil liberties safeguarded by the First and Fourteenth Amendments. Cf. *Thomas* v. *Collins*, 323 U. S. 516, 533-534. If a municipality, rather than a private employer owned the P. O. S. of A. hall, and, while permitting its use for all other types of public meetings, had denied its use for the purpose of a union meeting, there could be little doubt that the denial would transgress constitutional limitations. *Marsh* v. *Alabama*, 326 U. S. 501, 504-505; *Jamison* v. *Texas*, 318 U. S. 413; *Hague* v. *C. I. O.*, 307 U. S. 496; *Saia* v. *New York*, decided June 7, 1948, No. 504, 1947 Term; *Sellers* v. *Johnson*, 163 F. 2d 877 (C. C. A. 8), certiorari denied, 332 U. S. 851. The Board is of the view that denial of use of the hall for this purpose by the employer owners of the entire community, because of their hostility to unionization, is no more consistent with the poli-

cies of the Act than would a similar denial by a municipality be consistent with the policies of the Constitution.[15]

The court below also attempted to distinguish the *Republic* and *LeTourneau* cases on the ground that there "The premises of the employer were necessarily occupied by the whole group of employees assembled to operate the business" (R. 144), and the *Marsh* case on the ground that there the sidewalks "were freely used by the general public" (R. 143). To the extent that the court thus implied that there had been a dedication of the employer's property to employees in the *Republic* and *LeTourneau* cases, and to the public in the *Marsh* case, different in kind from the dedication of the P. O. S. of A. hall by the employers in this case, the court erred. In the *Marsh* case, this Court expressly refused to disturb the holding of the Supreme Court of Alabama that the company had not dedicated its streets to the public, and that the Jehovah's Witness was therefore a trespasser

[15] This does not mean, as the court below asserted (R. 142), that employers must maintain a building for union purposes if no other convenient meeting place is available. Just as a municipality need not build or maintain a public meeting hall to satisfy its obligations under the Constitution, so the employer in a company town need not build or maintain one to satisfy his obligations under the Act. Only where such an employer has erected and maintains a hall which he deems appropriate and permits to be used for meetings of employees and others, does the Act require that he not prohibit its use for union meetings.

thereon (326 U. S., at p. 505, n. 2). To the extent that there was a dedication in the *Marsh* case, or in the *Republic* and *LeTourneau* cases, there was dedication in the instant case.

In company-towns, as this case shows, meeting halls, no less than houses or streets, are appurtenances to the employer's business operations.[16] Considerations similar to those which move employers whose plants are located far from a city to provide large parking lots for employee cars, move employer-owners of company towns to maintain meeting halls for employee-residents. *LeTourneau* case, *supra;* see also, *National Labor Relations Board v. Lake Superior Lumber Corp.*, 167 F. 2d 147 (C. C. A. 6). The P. O. S. of A. hall in this case was erected in the first place for the convenience of employees, who were required, for the employers' advantage, to live in the company-town. Indeed, the employers permitted the officers of the P. O. S. of A. to exercise full control over the use of the hall; the P. O. S. of A. freely permitted groups of employees and others to use the hall without objection or interference by the employers (R. 9; 43-44, 45, 48). Never, save in the case of the Union, did the employers override the action of the P. O. S. of A. in granting permission to any group to use the hall as a meeting place. The P. O. S. of A. meeting hall was thus used by the em-

[16] Lahne, Herbert J., *The Cotton Mill Workers* (Farrar & Rinehart, Inc., 1944), p. 51.

ployee-townsfolk in this case no less freely than the streets in the *Marsh* case were used by the general public. Just as in the *Marsh* case the company objected not to the presence of the Jehovah's Witness on the street, but only to her activity there, so in this case the employers objected not to the presence of the group in the hall, but only to the purpose of their meeting. Here, as in that case, property rights were invoked not to protect property interests, but to frustrate the exercise of constitutional rights by others.

The court below also erred in finding in Section 8 (2) any justification for the employers' refusal to permit the union to use the hall for a meeting. In the *LeTourneau* case, *supra*, the Circuit Court of Appeals for the Fifth Circuit similarly held (143 F. 2d 67, 68), that Section 8 (2) justified the employer in refusing to permit company owned parking lots to be used as a "theater" for self-organizational activities. The point was pressed in this Court by the employer,[17] was answered fully by the Board in its brief,[18] and was overruled *sub silentio*. Compare, *Medo Photo Supply Corp.* v. *National Labor Relations Board*, 321 U. S. 678, 686-687. In the *Republic* case, *supra*, the employer defended his refusal to permit union steward but-

[17] See Brief for the LeTourneau Co., No. 452, October Term, 1944, pp. 19-20.

[18] See Brief for the National Labor Relations Board, in No. 452, October Term, 1944, pp. 39-44.

tons to be worn in the plant on the ground that to permit such display prior to recognition of the union as bargaining agent might jeopardize the employer's neutrality (324 U. S. 793, 801). This Court sustained the Board's finding that the wearing of steward buttons would not compromise the employer's neutrality and rejected the employer's contention (324 U. S., at p. 803). In this case, as in the *Republic* case, the Board fully explicated the reasoning upon which it predicated its conclusion that the grant of permission to use the hall for union meetings under the circumstances of this case, could not be deemed to constitute illegal support of the union, and could not jeopardize the employers' neutrality (*supra*, pp. 11-12). In disregarding these findings and conclusions of the Board and substituting inferences and conclusions of its own the court below violated well settled principles which govern review of Board orders by the courts. *National Labor Relations Board* v. *Hearst Publications, Inc.*, 322 U. S. 111, 130; *National Labor Relations Board* v. *E. C. Atkins & Co.*, 331 U. S. 398; *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.*, 331 U. S. 416.

II. The Board Properly Found That by Discriminatorily Denying Access to the Meeting Hall for the Purpose of Impeding Self-Organizational Efforts Among the Employees the Employers Violated Section 8 (1) of the Act

In any event, respondents' purpose to defeat unionization (a purpose not present in the *Republic* or *Le Tourneau* cases) makes the refusal to allow use of the hall unlawful.

In the *Republic* case (324 U. S., at p. 798), this Court pointed out that Congress in enacting the National Labor Relations Act, "did not undertake the impossible task of specifying in precise and unmistakable language each incident which would constitute an unfair labor practice. On the contrary, that Act left to the Board the work of applying the Act's general prohibitory language in the light of the infinite combinations of events which might be charged as violative of its terms."[19] In thus broadly directing the Board to put an end to employer interference with employee efforts to organize and bargain collectively, Congress did not withhold from the Board power to eradicate those interferences which flowed from exercises of property rights by employer-owners of company-towns. In *Marsh* v. *Alabama*, 326 U. S. 501, 508-509, note 6, this Court took specific notice of the history of "suppression of civil liberties in company towns and the need of those who live there for Constitutional protection." As the authorities referred to by the Court in that opinion disclose, outstanding

[19] Compare S. Rep. No. 573, 74th Cong., 1st Sess., p. 10.

among the liberties suppressed was the freedom of employees to organize and bargain collectively, to solicit members and to meet and perfect their organizations. Prior to the passage of the Act one of the typical methods of frustrating unionization utilized by employers in company-towns was the method employed here—refusing to permit meeting halls in the town to be used for union activities.[20] Cf. *Hague* v. *C. I. O.*, 307 U. S. 496.

Time and again the Board and the courts have held that employers in company towns who exercise their property rights in such fashion as to interfere with legitimate union activity thereby violate the Act.[21] The Board believes that elimination of the

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[20] Mitchell, George Sinclair, *Textile Unionism and the South* (University of North Carolina Press, 1931), p. 84; Fitch, John A., *The Causes of Industrial Unrest* (Harper & Bros., 1924), pp. 189-191, 197.

[21] *Matter of Harlan Fuel Co.*, 8 N. L. R. B. 25, 31-32, 63, (where the employer-owner of a company town denied access to a union representative); *Matter of West Kentucky Coal Co.*, 10 N. L. R. B. 88, 105-106, 133 (*idem.*), enforced, 116 F. 2d 816 (C. C. A. 6); *Matter of American Cyanamid Co.*, 37 N. L. R. B. 578, 585-586, 588 (where the employer-owner of a company town segregated the white and colored employees to prevent interchange of union information); *Matter of Ozan Lumber Co.*, 42 N. L. R. B. 1073, 1079-1081 (*idem.*); *Matter of Weyerhaeuser Timber Co.*, 31 N. L. R. B. 258, 264-267, 270 (where the employer-owner of a logging camp denied access to union representatives); *Matter of Cities Service Oil Co.*, 25 N. L. R. B. 36, 57 (where a shipowner denied permission to a union representative to come on board ships), enforced, 122 F. 2d 149, 152 (C. C. A. 2); *Matter of Richfield Oil Corp.*, 49 N. L. R. B. 593 (*idem.*), enforced 143 F. 2d 860 (C. C. A. 9); *Matter of Seas Shipping Co.*, 4 N. L. R. B. 757 (*idem.*).

practice of denying the use of meeting halls in company towns for the purpose of union meetings, like elimination of the practice of excluding union organizers from company towns altogether, is essential to secure to the many employees who live in such towns[22] adequate opportunity to exercise the rights guaranteed to them by the Act. The decision below erects an unwarranted barrier to the accomplishment of the full objectives of Congress.

In imposing broad limitations upon the exercise by employers of their powers over jobs and property in the interest of safeguarding employee rights to self-organization it may be assumed, as the Board and this Court have held,[23] that Congress did not ignore competing employer business or property interests. Its mandate need not therefore be read as prohibiting all employer imposed restrictions upon employee self-organizational activity, for some restrictions, such as prohibitions upon union solicitation during working hours, may be necessary to preserve plant discipline, which, like opportunity to organize, is an essential element "in a balanced society" *Republic* case, *supra*, 324 U. S., at p. 798. When restrictions upon union activity on an employer's property are imposed to protect some such competing employer interest, it

[22] *See Marsh v. Alabama*, 326 U. S. 501, 508; *Housing by Employers in the United States* (U. S. Department of Labor, Bull. No. 263).

[23] *Matter of Peyton Packing Co.*, 49 N. L. R. B. 828; *Republic* case, *supra*, 324 U. S., at pp. 797-798; see pp. 20, 23, 27, *supra*.

is for the Board, as the *Republic* and *LeTourneau* cases hold, to balance the competing interests and award priority in the light of the relative benefits and disadvantages which accrue from the restriction.

When, however, restrictions upon union activity are imposed by an employer through the exercise of powers over jobs or property, not to protect any legitimate business or property interest, or to protect the employer's neutrality, but solely to hamper employee opportunities to exercise the rights guaranteed them by the Act, effectuation of the policies of the Act is met by no competing considerations. For this reason, the Circuit Courts of Appeals have uniformly, except in the instant case, supported the Board's view enunciated in the *Peyton Packing* case, 49 N. L. R. B. 828, 843-844,[24] that even those restrictions upon union activities on an employer's premises which the employer may properly impose to protect legitimate business or property interests are violative of Section 8 (1) of the Act if they are imposed for the purpose of impeding or frustrating unionization. Thus, in the *LeTourneau* case, the Fifth Circuit stated that if the employer's refusal to permit distribution of union literature on the parking lots had been discriminatorily motivated, or if the employer had permitted other types of literature to be distributed there and had drawn the line at union litera-

[24] Quoted with approval in *Republic Aviation Corp.* v. *National Labor Relations Board*, 324 U. S. 793, 803-804, n. 10

ture, his conduct would have been violative of the Act (143 F. 2d, at p. 68).

In *National Labor Relations Board* v. *Gallup American Coal Co.*, 131 F. 2d 665, 667, the Circuit Court of Appeals for the Tenth Circuit, without questioning the right of the employer to prohibit all displays of advertising on stone boulders located on his premises, held that the employer violated Section 8 (1) of the Act by prohibiting the painting of union signs on the boulders while permitting other types of advertising to be painted there. In *National Labor Relations Board* v. *Columbia Products Corp.*, 141 F. 2d 687, 688, the Circuit Court of Appeals for the Second Circuit, while conceding the right of the employer to make and enforce rules prohibiting employees from visiting other departments during lunch periods in the interests of plant discipline, held the application of such a rule to prevent an employee from visiting other departments for the purpose of electioneering for a labor organization was violative of the Act when the rule had never been enforced as to employees who visited other departments for any other purpose and when the employer's motive was not to maintain discipline but rather to impede unionization. In *National Labor Relations Board* v. *Peyton Packing Co.*, 142 F. 2d 1009, 1010 (C. C. A. 5), certiorari denied, 323 U. S. 730; *National Labor Relations Board* v. *William Davies Co.*, 135 F. 2d 179, 181 (C. C. A. 7); and *Carter Carburetor Corp.* v. *Na-*

tional Labor Relations Board, 140 F. 2d 714, 716 (C. C. A. 8), the Circuit Courts of Appeals for the Fifth, Seventh and Eighth Circuits held that plant rules prohibiting solicitation on company premises on the employee's own time, though otherwise unobjectionable, were, as applied to bar union solicitation, violative of the Act, because they were promulgated for the purpose of impeding unionization.

In the instant case the Board found that the employers' refusal to permit the P. O. S. of A. hall to be used for a union meeting was motivated by a design to impede unionization (R. 9, 12). The court below did not dispute this finding. It impliedly conceded (R. 140), that if the employers had permitted one labor organization to use the hall for meetings while denying its use to another, the Act would thereby have been violated. Cf. *National Labor Relations Board* v. *Waterman Steamship Corp.*, 309 U. S. 206, 224-226; *Westinghouse Electric & Mfg. Co.* v. *National Labor Relations Board*, 112 F. 2d 657, 659-660 (C. C. A. 2), affirmed, 312 U. S. 660; *South Atlantic Steamship Co.* v. *National Labor Relations Board*, 116 F. 2d 480, 482-483 (C. C. A. 5), certiorari denied, 313 U. S. 582. We believe, as the cases cited above (*supra*, pp. 38-39) hold, that where a prohibition upon union activities on employer-owned property is motivated solely by a desire to impede unionization, the restriction is equally invalid under the Act

when it applies to the only labor organization seeking to organize the employees as when it applies to only one of two rival unions. The restriction upon the use of the hall in the instant case, coupled with the discriminatory discharge of four employees, and other unfair labor practices (p. 9, *supra*) was designed to, and did, frustrate the employees' opportunity to organize completely. Such frustration of statutory guarantees, accomplished through the exercise of economic power, without justification save in the existence of the power itself, is in the very teeth of the statute.

CONCLUSION

For the foregoing reasons it is respectfully submitted that the decision below should be reversed and the cause remanded with directions to enforce the Board's order in full.

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APPENDIX

National Labor Relations Act (Act of July 5, 1935, c. 372, 49 Stat. 449, 29 U. S. C. 151, *et seq.*):

* * * * *

RIGHTS OF EMPLOYEES

SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

SEC. 8. It shall be an unfair labor practice for an employer—

(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.

(2) To dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it: *Provided*, That subject to rules and regulations made and published by the Board pursuant to section 6 (a), an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay.

* * * * *

PREVENTION OF UNFAIR LABOR PRACTICES

SECTION 10. (a) The Board is empowered, as hereinafter provided, to prevent any person

from engaging in any unfair labor practice (listed in section 8) affecting commerce. * * *

(b) Whenever it is charged that any person has engaged in or is engaging in any such unfair labor practice, the Board, or any agent or agency designated by the Board for such purposes, shall have power to issue and cause to be served upon such person a complaint stating the charges in that respect, and containing a notice of hearing before the Board or a member thereof, or before a designated agent or agency, at a place therein fixed, not less than five days after the serving of said complaint. * * *

(c) * * * If upon all the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this Act. * * *

* * * * *

(e) * * * The findings of the Board as to the facts, if supported by evidence, shall be conclusive. * * *

* * * * *

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No. 46

In the Supreme Court of the United States

OCTOBER TERM, 1948

NATIONAL LABOR RELATIONS BOARD, PETTTIONER

v.

STOWE SPINNING COMPANY, ACME SPINNING COMPANY, PERFECTION SPINNING COMPANY AND LINFORD MILLS, INC.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

REPLY BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

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I

RESPONDENTS' OBJECTION TO THE BOARD'S FINDING THAT BY REFUSING TO PERMIT THE EMPLOYEES OF STOWE TO MEET IN THE P. O. S. OF A. HALL RESPONDENTS ACME, PERFECTION AND LINFORD, AS WELL AS STOWE, VIOLATED SECTION 8 (1) OF THE ACT IS NOT PROPERLY PRESENTED AND IS WITHOUT MERIT.

Respondents contend that since only employees of Stowe Spinning Company were scheduled to meet in the P. O. S. of A. hall, interference with their meeting by the Acme, Perfection and Lin-

ford companies may not be deemed violative of the Act, because allegedly, these respondents "owe no duty under the Act" to employees of Stowe Spinning Company (Br., p. 6). This objection was never urged before the Board and may not properly be presented to this Court.

Section 10 (e) of the Act provides that "No objection that has not been urged before the Board, its member, agent or agency, shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances." No excuse is offered for this failure.

In its complaint initiating proceedings in the instant case (par. XII), the Board alleged that Stowe Spinning Company, "in conjunction with Acme Spinning Company, Perfection Spinning Company and Linford Mills, Inc., who were jointly and severally acting directly or indirectly in the interest of Stowe Spinning Company" interfered with the exercise of rights guaranteed to employees of Stowe Spinning Company under the Act by prohibiting their scheduled use of the P. O. S. of A. hall for a union meeting.[1] In paragraph XVIII of the complaint the Board alleged that the four respondents did "jointly and severally" thereby "interfere with, restrain and coerce and are interfering with, restraining and coercing

[1] Section 2 (2) of the Act defines "employer" to include "any person acting in the interest of an employer, directly or indirectly."

their employees in the exercise of the rights guaranteed in Section 7 of the Act," in violation of Section 8 (1). In their answers respondents merely denied generally that unfair labor practices had been committed by the denial of use of the hall, and did not specifically object to the allegations that in effecting the denial the Acme, Perfection and Linford companies were acting "directly or indirectly in the interest of Stowe Spinning Company" and that they thereby interfered with the statutory rights of "their employees."

In the intermediate report the trial examiner found, as Board counsel had contended at the hearing (Tr. 423), that all four respondents were accountable under the Act for the conduct of D. P. Stowe, as their agent, in compelling the P. O. S. of A. to revoke the permission previously granted the Union to hold the scheduled meeting in the hall (I. R., p. 6, line 46, p. 7, line 47, p. 13, line 12). The trial examiner recommended that all four companies be ordered to cease and desist from "refusing to permit the use of the Patriotic Order Sons of America hall by their employees for self-organization" (I. R., p. 16, lines 18–19). In the statement of exceptions filed jointly by respondents to the intermediate report, respondents excepted only to the trial examiner's findings:

> (1) That Stowe's refusal, on behalf of all four respondents, to permit use of the

P. O. S. of A. hall for purposes of self organization in a labor union constituted disparity of treatment (I. R., p. 6, line 45 *et seq.*).

(2) That the sole design of Stowe's action for which all respondents are accountable, was to impede, prevent and discourage self-organization and collective bargaining by the employees at the North Belmont Mills (I. R., p. 7), line 4, *et seq.*).

(3) That by Stowe's discriminatory refusal to permit use of the P. O. S. of A. hall for the union meeting scheduled for January 28, 1945, the Respondents have interfered with, restrained and coerced their employees in the exercise of rights guaranteed in Section 7 of the Act (I. R., p. 7, line 53 *et seq.*)

Respondents also excepted to the trial examiner's conclusion of law that "by interfering with, restraining and coercing their employees in the exercise of rights guaranteed in Section 7 of the Act, the respondents have engaged in and are engaging in unfair labor practices, within the meaning of Section 8 (1) of the Act" (Conclusions of Law 4, 5, page 15). Respondents did not except to the trial examiner's finding that all four respondents were accountable for the conduct of D. P. Stowe, as their agent, nor, apart from their contention that the denial of use of the hall was not an unfair labor practice, and that no order was therefore warranted, did they object to the trial examiner's recommenda-

tion that the Acme, Perfection, and Linford companies, as well as Stowe Spinning Company, be ordered to cease and desist from the unfair labor practices which they were found to have committed. In the brief filed by respondents in support of the exceptions, respondents nowhere suggested that the Acme, Perfection and Linford companies were less responsible under the Act for the denial of the hall than was Stowe, or that if the order against Stowe was valid, it should not extend to the other companies. Having failed to object to the trial examiner's findings and recommendations, respondents are precluded from now urging before this Court that the Board erred in adopting these findings and recommendations. *National Labor Relations Board* v. *Cheney Lumber Co.*, 327 U. S. 385, 388–389; *Marshall Field & Co.* v. *National Labor Relations Board*, 318 U. S. 253; *May Department Stores Co.* v. *National Labor Relations Board*, 326 U. S. 376, 386, n. 5.

In any event, the contention is without merit. In joining with Stowe Spinning Company to deprive its employees of opportunity to conduct organizational meetings, the three affiliated companies were clearly acting as "employers" in relation to those employees within the meaning of Section 2 (2) of the Act. *Butler Bros.* v. *Na-*

The four companies own the building in which the P. O. S. of A. hall is located as tenants in common (R. 5; 37). D. P. Stowe, who controls the property as agent for the com-

tional Labor Relations Board, 134 F. 2d 981, 984–985, certiorari denied, 320 U. S. 789; *National Labor Relations Board* v. *Condenser Corp.*, 128 F. 2d 67, 71–72 (C. C. A. 3); *National Labor Relations Board* v. *Taylor-Colquitt Co.*, 140 F. 2d 92, 93 (C. C. A. 4). Moreover, the Board in its decision found (R. 12, n. 19) that in view of the closely-knit nature of the community, knowledge of respondents' action with respect to the hall "was shared by employees of the other respondents as well. The refusal served not only as a deterrent to

panies (R. 5; 100), is Secretary-Treasurer of respondent Perfection, Vice-President of respondent Acme (R. 5; 30), and a stockholder in all four companies (R. 30–31). The officers of Stowe Spinning Company, C. T. Stowe, President, C. P. Stowe, Vice-President, and R. L. Stowe, Secretary-Treasurer, are all cousins of D. P. Stowe (R. 5, 31). A. C. Lineberger is President of respondents Perfection, Acme, and Linford; J. Harold Lineberger is Vice-President of respondents Perfection and Linford (R. 4; 30–31). Cf. Davidson's Textile Blue Book (79th year, July, 1944), pp. 237–238. Ratchford, Benjamin U., *Economic Aspects on the Gastonia Situation*, Social Forces, Vol. 8, No. 3, March, 1930, pp. 359, 366.

In an attempt to refute the evidence showing that employee John R. Hall was discharged by respondent Stowe Spinning Company for union activities, counsel for the company introduced evidence that after his discharge, Hall was employed by Climax Spinning Company, at Belmont, North Carolina, "a mill owned or partly owned by the same interests" (Tr. 259–260, 307). In arguing for the admissibility of this evidence Mr. Mason, counsel for Acme Spinning Company, pointed out that "in some instances Mr. Lineberger runs one mill, and Mr. Stowe another, and the idea of this examination here is to show that Mr. Hall went to work * * * thereafter at a Stowe-Lineberger mill" (Tr. 259).

self-organization among the respondent Stowe's employees, but also to such organization among employees of the other respondents." (See also, R. 140.) On the basis of the Board's findings that the four respondents acted in concert through a single agent to deny the use of the hall as a means of frustrating the attempted exercise of self-organizational rights by employees of Stowe Spinning Company, it was reasonable for the Board to infer that, unless restrained, the respondents would likewise deny the use of the hall to employees of the Acme, Perfection and Linford companies, if they sought to use the hall for organizational purposes. The Board, therefore, included in its order (R. 22), a provision requiring the respondents to refrain from refusing to permit the use of the hall "by employees of any of the respondents' mills, including the employees of the respondent Stowe Spinning Company, * * * for the purposes of self-organization or collective bargaining."

II

RESPONDENTS' OBJECTION THAT THE BOARD'S ORDER WOULD REQUIRE RESPONDENTS TO MAINTAIN THE HALL FOR ALL TIME FOR UNION PURPOSES IS WITHOUT SUBSTANCE

Respondents object to the scope of the Board's order, contending that, literally read, the order would preclude respondents from devoting the space now occupied by the hall to other purposes

or from leasing or selling the hall (Br., pp. 12–13).

This contention is without merit. Even "literally interpreted" the order does not import the consequences which respondents impute to it.[3] Certainly the order does not forbid respondents to sell or to lease the P. O. S. of A. hall to others. Indeed, the provision of the Board's order relating to "successors or assigns" (R. 22), contemplates the possibility that respondents may do so.[4] It is also clear from the face of the order that it does not prohibit respondents from using the hall for other purposes, provided the Union is given a reasonable opportunity to have access to it. It is also clear that the order, viewed in the light of the circumstances and conditions which gave rise to it, does not preclude respondents from imposing reasonable and non-discriminatory conditions upon

[3] The order requires respondents to cease and desist from "refusing to permit the use of the Patriotic Order Sons of America hall by its employees or employees of Acme Spinning Company, Perfection Spinning Company, or Linford Mills, Inc., or by Textile Workers Union of America, C. I. O., or any other labor organization for the purpose of self-organization or collective bargaining."

The order requires respondents to take the following affirmative action: "Upon request, grant to its employees and employees of Acme Spinning Company, Perfection Spinning Company, or Linford Mills, Inc., and to Textile Workers of America, C. I. O., or any other labor organization, the use of the Patriotic Order Sons of America hall for the purpose of self-organization or collective bargaining" (R. 21–23).

[4] The extent to which this provision is effective to bind hypothetical successors is indicated in *Regal Knitwear Co. v. National Labor Relations Board*, 324 U. S. 9.

the use of the hall for self-organizational purposes. Cf. *National Labor Relations Board* v. *Lake Superior Lumber Corp.*, 167 F. 2d 147 (C. C. A. 6).

III

RESPONDENTS' CONTENTION THAT IN REFUSING TO PERMIT THE USE OF THE HALL RESPONDENTS ACTED PURSUANT TO COURT DECISIONS IS NOT PROPERLY PRESENTED AND IS WITHOUT MERIT

Respondents now assert that in refusing to permit the P. O. S. of A. hall to be used for a union meeting respondents were following the course suggested by the decision of the Court of Appeals for the Fifth Circuit in *LeTourneau Company of Georgia* v. *National Labor Relations Board*, 143 F. 2d 67 (Br., pp. 8–9). This explanation was not offered by respondents either to the trial examiner or to the Board and may not, therefore, properly be urged before this Court.

Attempt to justify respondents' denial of access to the hall by reference to Section 8 (2) of the Act was first made not by respondents but by Board Member Gerard D. Reilly in his dissenting opinion (R. 23–24). Mr. Reilly did not even intimate that respondents had been motivated in denying access to the hall by any desire to avoid the possibility that the granting of access might be deemed unlawful assistance to the Union. Indeed, Mr. Reilly did not dissent from the Board finding (R. 12), approved by the court below (R. 140), that the sole purpose of the denial was "to impede, prevent, and discourage self-organization

and collective bargaining." Respondents' effort to picture the denial of access as an attempt to comply with obligations which they assumed to be imposed upon them by the Act is a patent afterthought.

Perusal of the opinion of the Court of Appeals for the Fifth Circuit in the *LeTourneau* case would have led respondents to conclude that denial of access under the circumstances of this case, rather than being sanctioned by the Act, was rendered unlawful by it. For the court there clearly stated that if the employer's refusal to permit distribution of union literature on the parking lots had been motivated by anti-union animus, or if the employer had denied permission to distribute union literature on his property while permitting distribution of other types of literature his conduct would have been found unlawful (143 F. 2d, at p. 68). Since respondents were motivated by anti-union animus, and, in addition, discriminated as between self-organizational meetings and others, both conditions deemed by the court to render denial of access illegal were present here.

Moreover, Board decisions issued long prior to the instant case established unequivocally that respondents would have risked no charge of violating Section 8 (2) of the Act had they refrained from interfering with the Union's use of the hall pursuant to the arrangements which had been consummated by it with the P. O. S. of A. In cases involving company towns the Board has never held that the use by even a company-domi-

nated organization of an employer-owned meeting place, absent denial of such use to other labor organizations, constituted an element of illegal support or assistance. In *Matter of Harlan Fuel Company*, 8 N. L. R. B. 25, the Board found that the employer, owner of a company town, had violated the Act by dominating and interfering with the "formation and affairs" of the Yancey Workmen Association, Inc., a labor organization established and maintained by the employer for the purpose of combating and frustrating the organizational efforts of the United Mine Workers of America, affiliated with the C. I. O. The evidence showed that the Association had been permitted by the company to hold its organizational meeting at the company-owned gymnasium at Yancey (8 N. L. R. B., at p. 34). The evidence further showed that the union "was stopped by force in its activities, had its organizers ejected from the town, and had its members discriminated against" (8 N. L. R. B., at p. 37). The Board did not find that the use of the company's gymnasium for the Association's meeting was, in itself, an element of illegal support. It found only that in the light of the company's flagrant interference with the union's organizational efforts, the conduct of the company in permitting the Association to meet "without interference" materially assisted the latter (*ibid.*). And, in *Matter of West Kentucky Coal Co.*, 10 N. L. R. B. 88, 101, enforced, 116 F. 2d 816 (C. C. A. 6), the

Board specifically held that in a company town the use of a labor organization of an employer-owned schoolhouse as a meeting place is not an element of unlawful support, even where the labor organization using the hall is found on other evidence to be dominated and supported financially by the employer.

Respondents, who were engaged in a campaign to defeat self-organization by tactics including the discharge of union adherents and eviction of union leaders from their homes (R. 12–19, 145–147) could hardly, under these circumstances, have concluded that mere non-interference with use by the Union of the only available sheltered meeting place in the community, use for which the Union offered to pay (R. 6; 79–80), would have been regarded by the Board as unlawful support of the Union.

IV

THE MEETING HALL IS AN INTEGRAL PART OF RESPONDENT'S BUSINESS OPERATIONS

Respondents pitch their contention that they were under no obligation to permit their employees to discuss unionization in the P. O. S. of A. hall upon the allegation that the hall is wholly unconnected with respondents' business operations (Br., pp. 6, 7, 16). But this contention overlooks the fact that North Belmont is a company town, the very existence of which is attrib-

utable solely to respondent's business operations.[5] Where, for economic reasons, cotton mills are located in isolated areas, as are respondents' North Belmont mills, "force of necessity compelled the employer to provide housing accommodations for the labor which he brought to his establishment."[6] Where, "as is true of most cotton-mill villages in the South, * * * housing accommodations for the working force are as necessary a feature as the mill itself,"[7] provision of housing by the employer is recognized to be "an integral part of his main business."[8] Just as business necessities require the employer in such circumstances to provide housing for employees so they require the employer to furnish "nearly all the facilities for the maintenance of his workers including * * * stores, schools and often a mill-paid deputy sheriff."[9]

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[5] The court below stated that North Belmont "is largely, if not entirely, devoted to the business operations of the respondents" (R. 138).

[6] *Housing by Employers in the United States*, U. S. Dept. of Labor, Bureau of Labor Statistics, Bull. No. 263, p. 7; McDonald, Lois, *Southern Mill Hills* (Astoria Press, N. Y., 1928), p. 24.

[7] *Housing by Employers in the United States*, *op. cit. supra*, note 6, p. 142.

[8] *Ibid.*, p. 7.

[9] Pope, Liston, *Millhands and Preachers* (Yale University Press, 1942), pp. 36, 64; Kohn, August, *The Cotton Mills of South Carolina* (S. C. Dept. of Agriculture, Commerce & Immigration, 1907), p. 66. One employer is quoted as saying "The school is part of our business." Cook, John Harrison, *A Study of the Mill Schools of North Carolina* (Teachers College, Columbia University, 1925), p. 10.

It is recognized not only that the mill village is an "adjunct to" the mill,[10] but that "the desire for efficient and uninterrupted production prompted most of the village improvements and welfare services. * * *, employers who provided superior living conditions had an advantage in the labor market."[11] Among the facilities typically provided for employees by the owners of cotton mill villages as an aspect of their labor policy are community or lodge halls.[12]

Moreover, objective observers agree that the control exercised by employers over the subjects which may be discussed in such community or lodge halls is, particularly when coupled with the employer's control over schools, stores and housing, an effective deterrent to the exercise of freedom of speech and assembly by employees who live in mill villages.[13] It has been noted that

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[10] McDonald, Lois, *op. cit., supra*, note 6, p. 25.

[11] Pope, Liston, *op. cit., supra*, note 9, p. 19.

[12] Kohn, August, *op. cit., supra*, note 9, pp. 130, 150; Herring, Harriet L., *The Southern Mill System Faces a New Issue*, Social Forces, Vol. VIII, No. 3, March, 1930, pp. 350, 354; Herring, Harriet L., *Welfare Work in Mill Villages, The Story of Extra-Mill Activities in North Carolina* (University of North Carolina Press, 1929), pp. 129, 147; Pope, Liston, *op. cit., supra*, note 9, pp. 152, 155, 225, 238, 325; McDonald, Lois, *op. cit.*, supra, note 6, pp. 24, 36–37, 66.

[13] McDonald, Lois, *op. cit., supra*, note 6, pp. 24, 25, 31, 32; Pope, Liston, *op. cit., supra*, note 9, pp. 63–64; Cook, John Harrison, *A Study of the Mill Schools of North Carolina* (Teacher's College, Columbia University, 1925), pp. 8–10; Herring, Harriet L., *Welfare Work in Mill Villages, The Story of Extra-Mill Activities in North Carolina* (Univer-

group discussion by such employees of subjects which the employer does not approve is virtually impossible because "There is no place for meetings to discuss topics under ban." [14]

Obtaining of a meeting hall is recognized to be indispensable to the exercise of workers in mill villages of their rights to self-organization and collective bargaining.[15] Denial by employers of permission to use available meeting halls for purposes of self-organization is an effective method of precluding the exercise of self-organizational rights in such mill villages altogether.[16]

In 1939 the Textile Workers Organizing Committee reported to the Annual Convention of the Union concerning the efforts of employees to exercise their rights under the Act that "In mill-owned villages it is practically impossible to hold union meetings, and often the towns adjacent to these villages are so dominated by

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sity of North Carolina Press, 1929), p. 318; Herring, Harriet L., *The Southern Mill System Faces a New Issue*, Social Forces, Vol. VIII, No. 3, March, 1930, pp. 350, 353–354; Blanshard Paul, *The Southern Mill Village*, in Proceedings of the National Conference of Social Work, Fifty-Fifth Annual Session, 1928 (University of Chicago Press), pp. 276–281.

[14] Cook, *op. cit.*, *supra*, note 13, p. 10.

[15] Mitchell, George Sinclair, and Mitchell, Broadus, "The Plight of Cotton Mill Labor", in *American Labor Dynamics*, J. S. B. Hardman, Ed. (Harcourt, Brace & Co., 1928); McDonald, Lois, *op. cit.*, *supra*, note 6, p. 34.

[16] Blanshard, Paul, *Labor in Southern Cotton Mills* (New Republic, Inc., 1927), pp. 64–65.

the mill management that union halls cannot be secured."[17]

Erection of the hall by respondents, in their capacity as employers, in response to the expressed need of the workers for a place to meet, coupled with their denial of permission to discuss unionization in the hall, is typical of the pattern described above. D. P. Stowe testified at the hearing that erection of the meeting hall was attributable to respondents' policy of trying "to do what the help want" (R. 35). The fact that few organizations other than the P. O. S. of A. held meetings in the hall, upon which respondents premise their contention that the hall was not established "for the use of employees as such," (Br., pp. 14, 7–8), fails to support the argument. For, from the time the hall was erected until the employees became interested in the Union, there were, as Stowe himself testified, no other employee organizations in the town (R. 9; 35).

Denial of permission to discuss unionization in the hall, moreover, was designed to and did serve solely respondents' interests as employers. Like the discharge of employees for union activity and the eviction of union leaders from their

[17] *Building a Union of Textile Workers*, a Report of Two Years Progress to the Convention of the United Textile Workers Organizing Committee affiliated with the Congress of Industrial Organizations, Philadelphia, Pa., May, 1939, p. 16.

company-owned houses (R. 12–17, 145–147), denial of permission to use the meeting hall was a device utilized by respondents, as employers, to defeat the self-organizational efforts of their employees and to avoid collective bargaining (R. 12, 140).

During the hearings which preceded passage of the bill which became the Act, witnesses called to the attention of Congress the multitude of methods available to employer-owners of company towns, by virtue of their control over all property in the communities in which the employees lived, to frustrate the exercise of self-organizational rights.[18] One witness stated that in company towns "the autocracy of management possible under the rights of ownership has reduced the workers on many occasions almost to the status of industrial serfs."[19] Where, as here, the employer, as part of his business operations, exercises control over the houses in which employees live, the stores in which they shop, and the halls in which they meet, accomplishment of the objectives of the Act is impossible unless such employers are prohibited from exercising control over these properties in such fashion as

[18] Hearings on S. 2926, before the Senate Committee on Education and Labor, Part 1, March, 1934, 73d Cong., 2d Sess., pp. 137, 270, 276, 307.

[19] *Ibid.*, p. 284, statement of Arthur E. Suffern.

virtually to preclude effective exercise by their employees of the right to engage in organizational activity.

Respectfully submitted.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, ~~1947~~ 1948

No. ~~757~~ 46

NATIONAL LABOR RELATIONS BOARD, *Petitioner*

vs.

STOWE SPINNING COMPANY, ACME SPINNING COMPANY, PERFECTION SPINNING COMPANY AND LINFORD MILLS, INC.

BRIEF OF RESPONDENTS IN OPPOSITION TO THE PETITION OF NATIONAL LABOR RELATIONS BOARD FOR WRIT OF CERTIORARI TO CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1947

No. 757

NATIONAL LABOR RELATIONS BOARD, *Petitioner*

vs.

STOWE SPINNING COMPANY, ACME SPINNING COMPANY, PERFECTION SPINNING COMPANY AND LINFORD MILLS, INC.

BRIEF OF RESPONDENTS IN OPPOSITION TO THE PETITION OF NATIONAL LABOR RELATIONS BOARD FOR WRIT OF CERTIORARI TO CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT.

QUESTION PRESENTED

The question in this case is—

Can the Respondents be required to continuously maintain a building for union purposes whenever it suits the convenience of the employees of any one of the Respondents, The Textile Workers Union, C. I. O., or any other labor organization to requisition it (even though the building be not on the mill premises of any one of the Respondents), and to that extent to require the owners against their will to surrender their property rights?

The Board said yes.

The Circuit Court said no.

The Circuit Court of Appeals held that the finding and order of the Board are (1) in conflict with Subsection 8 (2) of the

Act, which makes it unlawful for an employer to contribute financial support to a labor organization, and (2) in conflict with the Constitution of the United States, Amendment V, in that they would deprive the Respondents of property without due process of law.

STATEMENT OF FACTS

North Belmont is an unincorporated town the center of which is some 2½ miles from the center of the City of Belmont, North Carolina. (R.29) It is not a "company-town", in the sense that it is owned by one company. Each of the four Respondents owns a cotton mill in the town. These four companies are separate and distinct North Carolina Corporations. Some of the officers of Acme, Perfection and Linford are officers of one or both of the others. (R.30-31). There is no evidence that they have interlocking directorships. There is no evidence that anybody connected with Stowe Spinning Company has any interest in any of the other Companies except D. P. Stowe, who owns a "very small amount" of stock in all four of the companies. The companies maintain separate and distinct villages for the residence of their employees, though some employees live outside the villages. The villages are not all contiguous to each other. The villages of Stowe Spinning Company and Acme Spinning Company practically join one another. The villages of Linford Mill and Perfection Mill join. The Acme Mill is about a half mile from Linford and Perfection Mills. The Patriotic Order Sons of America hall (in the same building as the post office) is more or less centrally located with respect to the Acme and Stowe villages. The hall is a quarter of a mile from the Stowe Mill and not more than 500 yards from the Stowe Village. (R. 31 and 32).

There is no evidence that there are not other businesses, buildings and property in the town of North Belmont besides such as are owned by the several mills.

OWNERSHIP, CHARACTER AND PURPOSE OF THE HALL

The undisputed evidence, testimony of D. P. Stowe (R. 32-39), Baxter Black (R. 40-47 and 119-123), and O. R. Stewart (R. 47-48 and 120-123), is to the effect that the Patriotic Order Sons of America is a national patriotic secret order, open to membership to any male of good character, its slogan being "God, our Country, our Order"; that a lodge or camp of the order was organized in North Belmont in 1929; that most of the members are employees of the North Belmont Mills, for the reason that most of the people in the village are employees of those mills, but that others who are not mill employees belong to it; that for several years, up until 1937, they held their meetings in the North Belmont School building; that the membership got too big for the school building and they wanted a building of their own; that in 1937 they appointed a committee to work with the idea of having a building of their own; that the four Respondents owned in common a vacant lot on the main street of the village, consisting of Lots 1, 2, 3 and 4 of the Skidmore lands, purchased by them from Thomas W. Springs and wife (R. 109); that the committee approached the owners with a view to acquiring the lot and erecting a building thereon with the aid of government funds; that the owners advised them that they were considering erecting a building on the lot for store rooms and post office, and proposed to put a hall on the second floor and let the Order use it for the purposes of the Order; that this was agreed to and the building was erected; that the lower floor was rented for a store and the village post office; that the P. O. S. of A. was given the use of the hall rent-free, with the understanding that it was not to be used for any other purpose. In the examination before the Trial Examiner the Board's attorney asked the Board's witness Stewart (who had been a member of the committee) if there was any reason why Mr. Harris, the union organizer, could

not have the use of the building, to which the answer was: "Absolutely, because the companies told us we could not let anybody have the building, any other organization." When the owners built the building they told the P. O. S. of A. that they were going to let them have the building free of rent but were not going to allow it to be rented for any (other) purpose, and that had been the policy since 1937. (R. 36, 39).

THE HALL WAS NOT A PUBLIC OR COMMUNITY HALL

The P. O. S. of A. camp has occupied the hall since 1937. It has its own equipment in the hall, 200-odd chairs, kitchen arrangement with dishes and all kinds of cooking equipment. Occasionally church suppers and like affairs have been held there. In the spring of 1945 a safety school was held there. O. R. Stewart testified that the use of the hall for church suppers was permitted because that came under the social activities of the Order. (R. 122).

Harris, the union organizer, first saw Stewart, who was the financial secretary of the camp, about getting the use of the hall for the January 28, 1945, meeting. Stewart referred him to Black, the president. (R. 79). Black testified that he told Harris the organization would have to have a meeting first before he could get the hall. (R. 45 and R. 128). However, the Board found that Black gave Harris permission to use the hall, without any qualification. No meeting of the organization was held. After talking with Stewart, Black reported the matter to Mr. Cauble, the superintendent of the Acme mill. Cauble or Stewart reported it to D. P. Stowe, the man who controlled the building for the owners. Stowe refused to permit the union meeting to be held in the hall (R. 50). The evidence that the P. O. S. of A. was allowed the use of the hall rent-free on condition that they should not let it be used by any other organization is not contradicted.

ARGUMENT IN OPPOSITION TO THE PETITION IN NO. 757

The hall was not built for a public hall or a community house, and the fact that it was used occasionally for church suppers and other purposes did not convert it into such. It was private property and the owners had a perfect right to refuse to allow it to be used for other purposes, or for any purpose. The fact that they did not register an objection when the Order permitted it to be used occasionally for other purposes did not estop them thereafter to refuse its use for any purpose, with or without cause. It did not convert the hall into a public hall or community hall open to the use of all comers. The union had no more right to use it than anybody else.

Whether Black did or did not tell Harris he could have the hall for the meeting is immaterial. The evidence is uncontradicted that the hall belonged to the respondents and that it was furnished rent-free to the P. O. S. of A. lodge upon the condition that it was not to be used by any other organization. If Black attempted to violate the terms of the agreement he "overstepped his bounds", and the owners had a right to demand compliance with the condition. The fact that the hall had occasionally been used for church suppers and other events in the course of eight years did not change the terms on which the lodge was granted the use of the hall or deprive the owners of the right to demand that the terms of the agreement be complied with. Black's actions are not determinative of the issue. D. P. Stowe's are. He represented the owners. As their agent he refused to let Harris, a union organizer, have the hall to hold a union meeting in, which was a compliance with rather than a violation of the provision of the Act, which forbids an employer to furnish support to a union. The owners (acting through D. P. Stowe) were within their constitutional rights in refusing the use of the hall. They were also following the decisions of the courts.

The refusal of the owners of the P. O. S. of A. hall to permit the use of the hall for a union meeting occurred on January 26, 1945. (R. 7). In June of the preceding year the Circuit Court of Appeals of the Fifth Circuit had said in the *LeTourneau* case, 143 F. 2d 67: "Under the National Labor Relations Act it is well settled that the employer cannot 'interfere' with any effort of the employees to organize, either to encourage or prevent it. He cannot facilitate the organization even by providing a meeting place without incurring the charge that he is attempting to dominate it . . . It may be wisest and best for all concerned that the employees discuss and act on the matter of their own organization elsewhere than on the employer's property."

It was not until April 23, 1945, three months after the refusal complained of in the instant case took place, that this Court reversed the lower Court in the *LeTourneau* case. So far as the law stood at the time of the refusal the owners of the hall would have been guilty of a violation of the Act if they had permitted the hall to be used for the meeting.

Besides, while this Court overruled the Circuit Court in that case and held that prohibiting the distribution of union circulars on the parking lot provided for the employees was a violation of the Act, the case is not authority for the position that an employer must provide and maintain a hall for union meetings.

VIOLATION OF PROPERTY RIGHTS

If the Circuit Court of Appeals had sustained the Board it would have been a violation of the Respondents' property rights. No individual can requisition the use of private property for any purpose. The Government itself cannot take it except for a public use, and then only by paying for it and observing due process of law. This applies to Congress, to the executive and to the courts. Fifth Amendment to the Constitution of the United States.

DECISION NOT IN CONFLICT WITH DECIDED CASES

The decision of the lower court is not in conflict with any case heretofore decided by this court.

There is a vast distinction between this case and the *Le Tourneau* Case, 324 U. S. 793. In that case the employer promulgated a rule prohibiting distribution of literature on the plant premises without permission from its personnel department. The company maintained a parking lot for the use of its employees. The plant manager denied a request of the president of the local union to permit the distribution of handbills in and about the plant announcing a union meeting, and the next day the president of the union went ahead and distributed union handbills on the parking lot during the lunch hour.

There the lot was set aside for the use of the employees as such. They were rightfully on the property and the Board found that the application of the rule to the distribution of union literature by the employees on the lot which resulted in the layoffs was an unfair labor practice under Sections 8 (1) and 8 (3) of the Act.

In the instant case the employees as such had no right to go into the hall without permission. The hall was not on mill premises. It was in the business district of the village. It was not connected with the mills or used for mill purposes. On this occasion neither the employees nor the representatives of the union had the permission of the Order or of the owners to use the hall. The permission tentatively granted by the president of Order (who said such permission had to be granted by a vote of the members) was withdrawn when the owners objected. The owners, through their agent, D. P. Stowe, refused permission. (R. 50).

The decision of the Circuit Court of Appeals is in no sense in conflict with the recent case of *N. L. R. B. v. Lake Superior Lumber Corp.*, cited on page 32 of the Board's Cross-petition

and Brief. There the bunkhouses were provided by the employer, on its premises, for the use of its employees as such. In the instant case the hall is off the mill premises, in the business district of the town, is not appurtenant to the business of any of the Respondents, and was built for use by a patriotic order in no way connected with the mills and in which membership was not restricted to employees, with the understanding that it was not to be used by any other organization. The *Lake Superior Lumber Corp.* case is in line with *N. L. R. B.* v. *West Kentucky Coal Co.*, 116 Fed. 2d 816, in which the court enforced an order of the Board requiring the employer to cease and desist from denying to its employees residing in houses owned by the employer the right to have any person call at their homes for the purpose of consulting, conferring or advising with, talking to, meeting or assisting, the employer's employees or any of them, in regard to the rights of the employees under the Act to self-organization.

The Circuit Court in the *Lake Superior Lumber Company* case drew a distinction between that case and the instant case, saying: "In our opinion, it (the Stowe case) involved an entirely different question and is not applicable. Free use of a company's private property for purposes of union organization, rather than access to employees in the property, was the issue. The employees neither lived in the property involved, nor, as a matter of right, spent any of their time there."

Marsh v. *Alabama*, 326 U. S. 501, 508, deals with the distribution of religious literature on the public streets of a company-owned town.

In the case of *Republic Aviation Corp.* v. *N. L. R. B.*, 324 U. S. 793, an employee was discharged for infraction of a company rule against soliciting in the factory. He had passed out application cards on his own time during lunch periods. In the *LeTourneau* case two employees were discharged for distributing union literature on a parking lot furnished by the

employer for use by its employees. In each case the employees were rightfully on the property; whereas, in the instant case, the P. O. S. of A. hall was not set apart for the use of the employees as such, but for the use of the Patriotic Order Sons of America, a patriotic secret order to which any male citizen of the United States of good moral character was eligible for membership.

In the case of *N. L. R. B.* v. *Cities Service Oil Co.*, 122 F. 2d 194, the Court sustained an order of the Board requiring the respondent to cease and desist from refusing passes to union Representatives to go on board tankers in order to investigate and negotiate concerning grievances of the seamen, but required that the order be amended by the addition of the following clause: "But such passes are not required to be issued without a provision therein that they shall be forfeited if the holder used his access to the vessels either to solicit membership in the Union or to collect dues."

RIGHTS OF ASSEMBLY AND FREE SPEECH

The Board in its conclusions as to the refusal says: "We have held, and the Supreme Court of the United States has confirmed the view, that when an employer's right to regulate the use of his own property comes into conflict with the employees' right to receive information to enable them to exercise their right to self-organization, which it is the policy of the Act to encourage, the conflicting rights must be balanced to determine which right, in a given situation, is paramount." (R. 9).

We do not find where the Supreme Court of the United States (or any other court) has held that it is the duty of an employer to furnish a hall for the employees to receive this information in. The *LeTourneau* case does not so hold.

Petitioner takes the position that the constitutional rights of assembly and free speech overbalance constitutional rights of private property. The cases cited do not warrant such a contention in the instant case. The right of free assembly does not

give the right to assemble on somebody else's private property against his will. Nor does the right of free speech give the right to speak anywhere at any time and to say anything the speaker wishes to say.

STOWE SPINNING COMPANY OWNED ONLY A ONE-FOURTH INTEREST IN THE HALL

The proposed meeting was for the employees of Stowe Spinning Company only. (R. 67). Stowe owns only a one-fourth interest in the property. The Board's Order would compel the other mills to furnish property for Stowe's employees to meet in.

The cease and desist order issued against all the Respondents, if carried out, would require the Acme, Perfection and Linford Companies, who own each a one-fourth undivided interest in the hall, to permit the use of their property by the employees of Stowe Manufacturing Company to whom they owe no duty under the Act.

THE BOARD'S ORDER WITH RESPECT TO THE USE OF THE HALL WAS IMPROPER

If the Court should find that the refusal of the Respondents to prevent the use of the hall under the attendant circumstances was discriminatory and in violation of Section 8 (1) of the Act, it does not follow that the Board's order was proper.

The order (R. bottom p. 22) requires that the respondents, upon request, grant to all persons employed in respondents' mills and to Textile Workers Union of America, C. I. O., or any other labor organization, the use of the hall for purposes of self-organization or collective bargaining. There are no limitations as to time or circumstances. Literally interpreted (if the order is sustained) this means that the owners can never devote the space now occupied by the hall to other purposes, or lease it or sell it, without being guilty of contempt of court. The owners would be required to keep the hall open perpetually.

under any and all circumstances, for the use of the employees in their union activities and for the use of any labor union (whether party to this action or not) that might come along and wish to use it. That would be an unwarranted control of private property by the government, in violation of the respondents' constitutional rights. It would also establish the clear-cut principle that it is the duty of an employer at all times to maintain a hall for its employees to meet in for union activities. This is beyond the requirements of the Act.

The Board held that the refusal of the owner of the hall to permit the union to use it for organizational purposes was due to the owners' hostility to the union and therefore in violation of the Act. However, under the Board's order the Respondents henceforth have no right for any reason, good or bad, to refuse the use of the hall. Hostility to a labor union may be a mistaken attitude, but it is not a crime or such a deviation from the line of rectitude as to require or justify the indefinite deprivation of a person's constitutional rights on account of it.

The statement on page 10 of the Board's cross-petition: "The Board found in view of the employers' practice of permitting the hall to be used by all other groups and organizations, their refusal to allow its use for organizational purposes 'constituted unlawful disparity of treatment and discrimination against the union,'" is not a correct statement. The Board did not find that it was the employers' practice to permit all other groups and organizations to use the hall.

The same inaccurate statement is contained in the Board's specification of errors (Cross-petition, p. 24), when it describes the hall as being a "meeting hall which is available for use by all persons and organizations not engaged in labor activities."

But if the Board's finding and the lower court's holding had been as stated and the hall had been available for all persons and organizations not engaged in labor activities, this would not have amounted to a dedication of the hall to all public and private uses.

NO IMPORTANT QUESTION OF FEDERAL LAW WHICH HAS NOT BEEN, BUT SHOULD BE, SETTLED BY THIS COURT

The only question of federal law the Petitioner is requesting the court to decide in this case is whether or not the guaranty contained in the Fifth Amendment to the Constitution of the United States against the deprivation of a person's property without due process of law means what it says. It is conceded that that is an important question. We deem it unnecessary to cite authorities to show that it has not been settled by this Court.

CONCLUSION

We respectfully submit that the Board's petition for a writ of certiorari in No. 757 should be denied for that it does not present an important question of federal law which has not been, but should be, settled by this court, or a federal question which has been decided in a way probably in conflict with applicable decisions of this Court.

PAUL C. WHITLOCK,
Attorney for Respondents.

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No. 46

In the Supreme Court of the United States

OCTOBER TERM, 1948

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

STOWE SPINNING COMPANY, ACME SPINNING COMPANY
PERFECTION SPINNING COMPANY, LINFORD MILLS, INC.

RESPONDENTS

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE RESPONDENTS

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In the Supreme Court of the United States

OCTOBER TERM, 1948

No. 46

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

STOWE SPINNING COMPANY, ACME SPINNING COMPANY PERFECTION SPINNING COMPANY, LINFORD MILLS, INC. RESPONDENTS

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE RESPONDENTS

OPINIONS BELOW

The opinion of the Circuit Court of Appeals (R. 137-147) is reported in 165F. 2d 609. The findings of fact, conclusions of law, and order of the Board (R. 1) are reported in 70 N. L. R. B. 614.

STATEMENT

The essential facts are as follows:

The Respondents are four separate and distinct North Carolina Corporations, each owing and operating a cotton mill in North Belmont, an unincorporated town some two and one-half miles from the center of the City of Belmont, North Carolina (R. 39).

A lodge of the Patriotic Order Sons of America (referred to as P. O. S. of A.), a national patriotic order, was organized in the town in 1929. Its membership was largely, though not entirely, composed of employees of the North Belmont Mills (R. 38, 119, 123).

For several years the lodge met in the village school building. In 1937 they decided to build a lodge hall and offered to purchase for a site a vacant lot which was owned in common by the Respondents. The owners advised them that they were considering erecting on the lot a building for store rooms and a post office, and offered to put a hall on the second floor and let the Order use it for its lodge room. This was agreed to and the building was erected and the P. O. S. of A. was given the use of the hall rent-free, with the understanding that it was not to be used for any other purpose (R. 35, 36, 120).[1]

[1]On page 4 of Petitioner's brief near the bottom it is incorrectly stated: "This building was erected by the employers in 1937 to provide shopping facilities and a meeting place for the convenience of the employee-villagers, who, by virtue of their employment in the community, were isolated from other public facilities." The evidence is to the effect, and the Board found (R. 8), that the building was constructed "for the dual purpose of providing store space for the convenience of employees, and a meeting place for members of P. O. S. of A., who for some years had been using the school house auditorium." The Board found further (R. 8): "As to the arrangements under which the P. O. S. of A. was permitted use of this company-owned property, Stowe credibly testified without contradiction that it was built especially for the Patriotic Sons of America to hold their meetings in and was not to be rented to anybody else.' He also testified: '. . . we told the Patriotic Sons of America that we were going to let them use the building free of rent, but were not going to allow it to be rented for any (other) purposes.'"

The P. O. S. of A. lodge has occupied the hall since 1937. Occasionally church suppers and like affairs have been held in the hall and in the spring of 1945 a safety school was held there (R. 43).[2]

In January 1945 Harris, a union organizer, sought to obtain permission to use the hall for a union meeting. The request was refused by D. P. Stowe, the man who controlled the building for the owners.

Charges of unfair labor practices were filed by the union (Textile Workers Union of America, C. I. O.). After the usual proceedings the National Labor Relations Board found that in refusing the use of the hall to the union the Respondents had interferred with, restrained and coerced their employees in the exercise of the rights guaranteed in Section 7 of the Act, in violation of Section 8 (1) thereof, and issued its order requiring that the respondents, upon request, grant to all persons employed in Respondents' mills and to Textile Workers Union of America, C. I. O., or any other labor organization, the use of the hall for purposes of self-organization or collective bargaining. The Respondents refused to comply, and upon the Board's petition to the Circuit Court of Appeals for enforcement of the Board's order, that court refused to enforce the order upon the grounds that if the employers had permitted the union to use the hall they would

[2]On page 9 of Petitioner's brief it is incorrectly stated: "The Board found that in view of employers' practice of permitting the hall to be used by all other groups and organizations, their refusal to allow its use for organizational purposes 'constituted unlawful disparity of treatment and discrimination against the Union.'" The Board did not find that it was the employers' practice to permit the hall to be used by all other groups and organizations (R. 9). In the Summary of Argument and in the Argument in the Board's brief it is stated several times that the employers permitted the hall to be used for all other types of meetings. The Board did not so find, and such was not the case.

have risked a charge that they had violated Section 8 (2) of the Act (R. 141-142), and that the order violated the due process clause of the Fifth Amendment by compelling the companies to surrender their other (than plant) property against their will (R. 142, 145).

SUMMARY OF ARGUMENT

I

The Board's order, if sustained, would be violative of the provision of Subsection 8 (2) of the National Labor Relations Act, which makes it unlawful for an employer to contribute financial aid or other support to any labor organization.

The proposed meeting was to be for the employees of Stowe Spinning Company only. That company did not own the hall. It owned only a one-fourth interest in it. The other companies were not required to permit Stowe's employees to use their property. The hall was not on the mill premises of any of the Respondents. It was 500 yards from Stowe's plant. It was not a public or community hall but was built especially for a lodge room for the Patriotic Order Sons of America, with the understanding that it was not to be used by any other organizations. In refusing to permit the use of the hall for a union meeting the Respondents were following the decisions of the courts. The Board's order would require the Respondents to furnish the hall rent-free to the employees of any of them and to any labor organization for all time to come, which would violate the Act.

II

The Board's order, if sustained, (1) would sanction the taking of private property by private persons without due process of law and (2) would be a taking by the government of private property for the use of private persons without due process of law, and, therefore, would be violative of the Fifth Amendment to the Constitution of the United States.

The purpose of the Act is to protect interstate commerce from disruption, and, as a means to that end, to guarantee to employees the right of self-organization and collective bargaining, but these rights must be exercised within constitutional authority. The action of the Board in this case went beyond the powers granted it by Congress (or that Congress had the power to grant it) and infringed the constitutional rights of Respondents. Neither the Board, an agency of the government, nor the courts, a branch of the government, has the power under the Constitution to authorize the taking of private property for a private use. Even if the Respondents' refusal to permit the use of the hall was motivated by a desire to impede unionization, this did not nullify the constitutional guaranty against deprivation of their property without due process of law.

ARGUMENT

I

Whatever may be the right of employees to use in their union activities property of the employer connected with its business of manufacturing and distributing goods in interstate commerce, such right does not extend to the employer's other property.

THE HALL DID NOT BELONG TO STOWE SPINNING COMPANY.

The Stowe Spinning Company owned only a one-fourth interest in the hall (R. 34 and 109).

The proposed meeting was for the employees of Stowe Spinning Company only (R. 67). The Board's Order would compel the other mills to furnish property for Stowe's employees to meet in.

The cease and desist order issued against all the Respondents, if carried out, would require the Acme, Perfection and Linford Companies, who own each a one-fourth undivided interest in the hall, to permit the use of their property by the employees of Stowe Spinning Company, to whom they owe no duty under the Act.

HALL IS NOT ON MILL PREMISES.

The hall in question is not on the mill premises of any of the Respondents, or used by any one of them in its mill business, but is in a business building in the business district of the town of North Belmont, housing on the ground floor a grocery store and the United States Post Office, and on the second floor the Patriotic Order Sons of America Lodge. The property is owned jointly by the four respondents.

THE HALL IS NOT A PUBLIC OR COMMUNITY HALL.

The building in which the hall is located is in no way connected with the cotton manufacturing business of any of the Respondents. It was built to house a post office, grocery stores and a lodge room for the Patriotic Order Sons of America, a national patriotic order. The Order was given the use of the hall rent-free with the understanding and upon the express condition that it was not to be used for any other purpose (R. 35). It had been used as a lodge hall by the P. O. S. of A. for eight years. The fact that it was used occasionally for church suppers and other purposes did not convert it into a community hall. It was private property and the owners had a perfect right to restrict its use by others. The fact that they did not register an objection when the Order permitted it to be used occasionally for other purposes did not estop them to refuse its use for any purpose, with or without cause. It did not convert the hall into a community hall or a public hall open to all comers. The union had no more right than anybody else to use the hall against the will of the owners.

In the Petitioner's brief emphasis is placed on the fact that permission was granted to others to use the hall as a meeting place; and it is asserted that, "the P. O. S. of A. meeting hall was thus used by the employee-townsfolk in this case no less freely than the streets in the *Marsh* case were used by the general public." (Bottom of page 31 and top of page 32 of Petitioner's brief.) That statement is not in accord with the facts. Throughout the brief Petitioner seeks to show that the hall was wide open to any group that might wish to use it; whereas, the evidence shows that during a period of 8 years churches had banquets in it once in a while (R. 43), the Ladies Aid Society used it once or twice, one Christmas party was held there, and a safety school was held there for

three weeks during the Spring of 1945 (R. 44). The Petitioner sees no distinction between these infrequent permissive uses of the hall and the use of streets by the general public and argues that because these uses were permitted the owners lost their constitutional rights to control the use of the property.

Whether Black, an officer of the lodge, did or did not tell Harris he could have the hall for the meeting is immaterial. The evidence is uncontradicted that the hall belonged to the Respondents and that it was furnished rent-free to the P. O. S. of A. lodge upon the condition that it was not to be used by any other organization. If Black attempted to violate the terms of the agreement he "overstepped his bounds," and the owners had a right to demand compliance with the condition. The fact that the hall had occasionally been used for church suppers and other events in the course of eight years did not change the terms on which the lodge was granted the use of the hall or deprive the owners of the right to demand that the terms of the agreement be complied with. Black's actions are not determinative of the issue. D. P. Stowe's are. He represented the owners. As their agent he refused to let Harris, a union organizer, have the hall to hold a union meeting in, which was a compliance with rather than a violation of the provision of the Act, which forbids an employer to furnish support to a union. The owners (acting through D. P. Stowe) were within their constitutional rights in refusing the use of the hall. They were also following the decision of the courts.

IN REFUSING TO PERMIT THE USE OF THE HALL THE RESPONDENTS WERE FOLLOWING COURT DECISIONS.

The refusal of the owners of the P. O. S. of A. hall to permit the use of the hall for a union meeting occurred on

January 26, 1945 (R. 7). In June of the preceding year the Circuit Court of Appeals of the Fifth Circuit had said in the *LeTourneau* case, 143 F. 2d 67: "Under the National Labor Relations Act it is well settled that the employer cannot 'interfere' with any effort of the employees to organize, either to encourage or prevent it. He cannot facilitate the organization even by providing a meeting place without incurring the charge that he is attempting to dominate it . . . It may be wisest and best for all concerned that the employees discuss and act on the matter of their own organization elsewhere than on the employer's property."

It was not until April 23, 1945, three months after the refusal complained of in the instant case took place, that this Court reversed the lower Court in the *LeTourneau* case. So far as the Act had been interpreted at the time of the refusal the owners of the hall would have been guilty of violation of the Act if they had permitted the hall to be used for the meeting. Besides, while this Court overruled the Circuit Court in that case and held that prohibiting the distribution of union circulars on the parking lot provided for the employees was a violation of the Act, the case is not authority for the position that an employer must provide and maintain a hall for union meetings. Any lawyer, in view of the *LeTourneau* case, would have advised the owners by all means to refuse the use of the hall for union purposes.

The Respondents were in a position where they had to watch their step. To refuse or not to refuse, that was the question. They chose the course suggested by a highly respectable court, which was the last word on the subject.

In numerous cases where employers have been charged with giving support to an intermural union the Board has found and held that the employer's furnishing a meeting

place to such a union constituted support within the meaning of Section 8 (2).

Indeed, in the Brief for the National Labor Relations Board, filed in this court, in the *LeTourneau* case, which is urged as authority for the Board's action in this case, it was stated: "It is true, of course, that an employer's grant to a labor organization of such valuable facilities as a meeting place, bulletin boards, clerical or legal services and the like, constitutes support within the meaning of Section 8 (2)." In support of the assertion that granting a meeting place constitutes such support, the following cases were cited:

Matter of Berkshire Knitting Mills, 46 N. L. R. B. 955, 977, enforced, 139 F. (2d) 134, 139 (C. C. A. 3), certiorari denied, 322 U. S. 747; *Matter of Cudahy Packing Co.*, 17 N. L. R. B. 302, 316, enforced, 118 F. (2d) 295 (C. C. A. 10); *Matter of Western Garment Mfg. Co.*, 10 N. L. R. B. 567, 570, 573; *Matter of J. Greenebaum Tanning Co.*, 25 N. L. R. B. 672, 675, 684, 685, enforced by consent, January 26, 1942 (C. C. A. 7); *Matter of Virginia Electric & Power Co.*, 44 N. L. R. B. 404, 415-418, 425, enforced, 319 U. S. 533; *Matter of Hancock Brick & Tile Co.*, 44 N. L. R. B. 920, 924; *Matter of Norfolk Shipbuilding & Drydock Corporation*, 12 N. L. R. B. 886, 891, 893, enforced, 109 F. (2d) 128, 129 (C. C. A. 4); *Matter of Houde Engineering Corp.*, 42 N. L. R. B. 713, 722, 725; *Matter of Carlisle Lumber Co.*, 2 N. L. R. B. 248, 270-271, enforced, 94 F. (2d) 138, 143 (C. C. A. 9), certiorari denied, 304 U. S. 575; *Matter of Lane Cotton Mills Co.*, 9 N. L. R. B. 952, 969-970, enforced, 111 F. (2d) 814, 816 (C. C. A. 5); *Matter of Bradford Dyeing Assn.*, 4 N. L. R. B. 604, 613-614, enforced, 310 U. S. 318, 335.

The employers in those cases were found to have given support in the manner following:

In the *Berkshire Knitting Mills* case, by permitting an employee's association to use the recreation hall in the company-owned dispensary building for meetings and for other purposes while denying such use to the union.

In the *Cudahy Packing Company* case, by permitting use of a hall for a union meeting.

In *Matter of Western Garment Manufacturing Co.*, by inviting and permitting the union to meet in the factory lunch room.

In *Matter of J. Greenebaum Tanning Co.*, by permitting an intermaural union to meet on company property.

In *Matter of Virginia Electric & Power Co.*, by permitting a company-wide unaffiliated labor organization to meet on company-owned property.

In *Matter of Hancock Brick & Tile Co.*, by permitting its employees to meet in the company's garage to organize a "company union."

In *Matter of Norfolk Shipbuilding & Drydock Corporation*, by permitting its employees to meet on company property to organize a company union.

In *Matter of Houde Engineering Corporation*, by providing without cost meeting facilities to a company union.

In *Matter of Carlisle Lumber Co.*, by permitting a company union to meet in company's club house.

In *Matter of Lane Cotton Mills Company*, by allowing a meeting for the purpose of organizing an "Independent organization" to be held in the recreation room of the respondent.

In *Matter of Bradford Dyeing Assn.*, by permitting an "Employees Federation" to meet in the Bradford Social Club, which property was owned by the respondent.

All those cases involved the furnishing of support to

"company unions," but surely the same rules would apply in the case of any other sort of union.

The very obvious distinction between the instant case and the line of cases relied on by the petitioner was drawn by the Circuit Court of Appeals for the Sixth Circuit in the case of *N. L. R. B. v. Lake Superior Lumber Corp.*, 167 F. 2d 147, which was decided since this case was decided in the lower court. Said the court:

"In our opinion, it (the Stowe case) involved an entirely different question and is not applicable. Free use of a company's private property for purposes of union organization, rather than access to employees in the property, was the issue. The employees neither lived in the property involved, nor, as a matter of right, spent any of their time there."

ORDER OF BOARD WOULD REQUIRE RESPONDENTS TO MAINTAIN THE HALL FOR ALL TIME FOR UNION PURPOSES.

The order (R. 22) requires that the respondents, upon request, grant to all persons employed in respondents' mills and to Textile Workers Union of America, C. I. O., or any other labor organization, the use of the hall for purposes of self-organization or collective bargaining. There are no limitations as to time or circumstances. Literally interpreted (if the order is sustained) this means that the owners can never devote the space now occupied by the hall to other purposes, or lease it or sell it, without being guilty of contempt of court. The owners would be required to keep the hall open perpetually, under any and all circumstances, for the use of the employees in their union activities and for the use of any labor union (whether party to this action or not) that might wish to use it. That would be an unwarranted control of private property by the government, in violation of the

respondent's constitutional rights. It would also establish the clear-cut principle that it is the duty of an employer to maintain a hall for its employees to meet in for union activities. This, we submit, is beyond the requirements of the Act.

II

The Board's Order, if sustained, (1) would sanction the taking of private property by private persons without due process of law and (2) would be a taking by the government of private property for the use of private persons without due process of law, and therefore, would be violative of the Fifth Amendment to the Constitution of the United States.

The purpose of the Act is to protect interstate commerce from disruption, and, as a means for the accomplishment of that purpose, to guarantee to employees the right of self-organization and collective bargaining. But, like every other right, these rights must be exercised in a lawful manner and with due regard for the rights of others.

RIGHTS OF ASSEMBLY AND FREE SPEECH.

Petitioner takes the position that the constitutional rights of assembly and free speech overbalance constitutional rights of private property. Board's brief, page 24, declares: "Freedom of speech, as the cases hold, is entitled to greater protection from legislative regulation than any claim of unfettered right to do as one will with one's property." As authority for this statement the case of *Murdock v. Pennsylvania*, 319 U. S. 105, 115, is cited. The case does not so hold. It deals with the right of a city to prohibit a person to sell religious literature in the city without first obtaining a license. The other cases cited in support of Petitioner's contention do not support it. The rights of freedom of assembly and freedom of

speech do not include the right to assemble and speak on somebody else's property against his will. In the case of *Thomas v. Collins*, 323 U. S. 516, 533-534, referred to in Petitioner's brief (pp. 18, 20, 29) there was no question of private property. In that case Thomas insisted on speaking to a mass meeting in the City Hall without first obtaining an organizer's card as required by Texas law. The Court held that the Texas Statute as applied contravened the Constitution of the Unied States.

That case and the *Hague* case, 307 U. S. 496, 515-516, cited in Petitioner's brief in the same connection (pp. 29, 35) deal with the attempted interference by a State with the rights of assembly and free speech. Neither is authority for Petitioner's contention here that one's private property can be taken by another in order to enable that other to enjoy those rights.

Marsh v. Alabama, 326 U. S. 501, 508, cited on pages 16, 28, 29, 30, 32, 34, 36 of Petitioner's brief, deals with the distribution of reljgious literature on the public streets of a company-owned town.

As to *Republic Aviation Corp. v. N. L. R. B.* and *N. L. R. B. v. LeTourneau Company of Georgia*, cited numerous times in Petitioner's brief: In the *Republic* case an employee was discharged for infraction of a company rule against soliciting in the factory. He passed out application cards on his own time during lunch periods. In the *LeTourneau* case two employees were discharged for distributing union literature on a parking lot furnished by the employer for use of its employees. In each case the employees were rightfully on the property; whereas, in the instant case the P. O. S. of A. hall was not set apart for the use of the employees as such, but for the use of the Patriotic Order Sons of America, a patriotic

secret order to which any male citizen of the United States of good moral character was eligible for membership.

In the case of *N. L. R. B. v. Cities Service Oil Co.*, 122 F. 2d 149, cited on page 19 of Petitioner's brief, the Court sustained an order of the Board requiring the respondent to cease and desist from refusing passes to union representatives to go on board tankers in order to investigate and negotiate concerning grievances of the seamen, but required that the order be amended by the addition of the following clause: "But such passes are not required to be issued without a provision therein that they shall be forfeited if the holder uses his access to the vessels either to solicit membership in the Union or to collect dues." To the same effect is the ruling in the case of *Richfield Oil Corp. v. N. L. R. B.*, 143 F. 2d 860, cited on page 35 of Petitioner's brief, except that the clause required by the Court to be inserted in the order in the *Cities Service* case was already contained in the passes in the *Richfield* case. In *N. L. R. B. v. West Kentucky Coal Co.*, 116 F. 2d 816, cited on same page of brief, the Court enforced an order of the Board requiring the employer to cease and desist, *inter alia*, from "denying to its employees who reside in houses owned by the respondent the right to have any persons call at their homes for the purpose of consulting, conferring or advising with, talking to, meeting or assisting, the respondent's employees or any of them in regard to the rights of said employees under the Act to self-organization," etc. In other words, it was held that an employee had a right to choose his guests in his home, a not unreasonable ruling in no way militating against respondents' contention in the instant case.

Rights of employees are not more sacred than the rights of employers. In recent years, emphasis has been placed on certain rights—of free speech, freedom of the press; freedom

of religion, etc. But none of these has any greater force or higher sanction than the rights of private property. From Magna Charta on down, the individual has been guaranteed against disseisin of his property. Under these guaranties, no man, nor the government itself or any branch thereof, can compel individuals or corporations to give up their property to any private person or organization, or to the government itself but by due process of law. The order of the Board in this case would require the owners of this building, erected off the mill premises of any of them, wholly unconnected with the operations of the plants of any of them, built for a post office, stores and a lodge hall for a national patriotic order, to hand over a portion of it to a labor union at any time, now or hereafter, on demand. No amount of rationalization can free such a procedure from the ban of constitutional condemnation.

ACT MUST OPERATE WITHIN SPHERE OF CONSTITUTIONAL AUTHORITY.

As the lower court stated in its opinion: "There can be no doubt that if such a compulsion were exercised by the government for its own purposes, there would be a deprivation of property without due process of law, or a taking of private property for public use without just compensation in contravention of the Fifth Amendment to the Federal Constitution; and certainly if the surrender of the property against the will of the owner were compelled by any private person other than a labor union no one would deny that a deprivation of property without due process of law had occurred."

There is no question here of taking private property for public use. The questions are, can private persons take private property for private use? If the owner refuses to consent,

can the court compel him to do so? Whether the property is to be used for a month or a year, or for only an afternoon, the principle is the same.

No employee of any of the respondents sought permission to use the hall for the January 1945 meeting. Harris, the union organizer, sought it. He sought to obtain the use of the hall by virtue of no right apart from the National Labor Relations Act. It was under that act that he claimed the right. The Act does not specifically confer the right on labor unions to appropriate private property. If it did, no one would contend that it was not unconstitutional. It is contended, however, that the Act confers the right by implication. If it does, it is as unconstitutional as if it conferred it by explicit terms.

The United States has the right to take private property for public use by paying for it. It has no right to take private property for private use, pay or no pay.

The power of Congress to regulate commerce undoubtedly carries with it power over all the means and instrumentalities by which commerce is carried on, but these means and instrumentalities must be such as do not violate rights guaranteed by the Constitution. They also must bear a reasonable relation to the main and controlling purpose of the enactment which in this case is the regulation of commerce.

There is no conflict in the instant case between Article I of the Constitution, which grants to Congress the power to regulate commerce, and Amendment 5, which declares that no person shall be deprived of life, liberty, or property without due process of law. But there is conflict between the actions of the National Labor Relations Board and Amendment 5.

Congress undoubtedly had the power to pass the Act under its power to regulate commerce. It did not have the

power, nor did it undertake by the Act, to cancel out the rights guaranteed by the 5th Amendment. The Board, acting under the powers granted it by the Act, undertakes to go beyond the powers granted. It undertakes to deprive a person of his property without due process of law, which the Constitution forbids.

While it is true that the power of Congress to regulate commerce carries with it power over the means and instrumentalities by which commerce is carried on, it is no less true that these means and instrumentalities must be such as do not violate rights guaranteed by the Constitution. They also must bear a reasonable relation to the main and controlling purpose of the enactment, which in this case is the regulation of commerce.

The Respondents do not question the constitutionality of the Act. They do not deny that there is substantial connection between the object sought to be obtained and the means provided to accomplish that purpose. Their complaint is that the actions of the Board in this case went beyond the powers granted it by Congress (or that Congress could have granted it) and infringed the constitutional rights of the Respondents.

The power to regulate interstate commerce is subject to all the limitations imposed by the Constitution, including the Fifth Amendment. *Monongahela Navigation Co. v. United States;* 148 U. S. 312, 336; *United States v. Chicago M. & St. P. R. Co.*, 282 U. S. 311; *Railroad Retirement Board v. Alton R. Co.*, 295 U. S. 330. In *N. L. R. B. v. Jones and Laughlin Steel Corp.*, 301 U. S. 1, 33-34, the Court held that the "National Labor Relations Act, so far as it safeguards the right of employees to self-organize and to select representatives of their own choosing for collective bargaining or other mutual protection, without restraint or coercion by

their employer, does not invade the constitutional rights of employers and employees." But no court has ever said that the Board's action are not circumscribed by the Constitution.

It was said in the *Jones and Laughlin* case that the Act might be construed so as to operate within the sphere of constitutional authority as it purports to reach only what might be deemed to burden or obstruct interstate or foreign commerce, and thus qualified it must be construed as contemplating the exercise of control within constitutional bounds.

If the Board had decided that the labor organizer or the Stowe employees had the right, in order to enjoy their right to assemble for organizational purposes, to deprive some person of his life or liberty without due process of law, and had upheld such conduct, would the court have sustained the Board? Certainly not. Yet the constitutional guaranty against deprivation of property and that against deprivation of life and liberty are linked together in the same sentence. One is as strong as the other.

The cases of *Euclid v. Ambler Realty Co.*, 272 U. S. 365, and the other cases cited along with it on page 25 of the Petitioner's brief to sustain the position that the Constitution does not protect Respondents' hall from being taken over by the union for a meeting do not sustain the position.

Those cases are based on the police power of states or the analogous power of the federal government, or on war powers.

The Petitioner argues that there is no showing that if the Union had been permitted the use of the hall the owners would not have suffered any inconvenience or interference either with their business or with any uses which they desired to make of the hall, and that, therefore, the permission should have been granted. The right to invade another's property is

not determined by the amount of damage the invader might do. He might do damage or he might not. The unlikelihood of a visitor to damage the home has no bearing on the right of the householder to refuse to permit him to enter.

If any private person or organization other than a union or employee had conceived that they had a right to requisition the Respondents' property, the state courts could have determined the issue. But the union invokes the National Labor Relations Act and calls on the Federal Government to compel the Respondents to turn over their property to it, a private organization. The Board says the Respondents did wrong—violated the law by not permitting the union organizer to walk in and take over the hall without permission of the owners and without any prior legal proceedings to determine his right to do so. The Board says, in effect, that the organizer had a right to do that, and, what's more, that any labor union has the right at any time in the future to take over the hall and hold a union meeting in it without asking anybody's permission. The Circuit Court disagrees, and the Board asks this Court to overrule the Circuit Court of Appeals and uphold the Board's action.

We submit that neither the Board, an agency of the government, nor the courts, a branch of the government, has the power under the Constitution to authorize the taking of private property for a private use.

If constitutional security is forced to give way for an instant to the pressure of a powerful group, thereafter other groups will claim the same privilege, and the end will be near for constitutional guaranties. Under our system of government and law, the rights of private property have been held to be inviolate. They are guaranteed by our fundamental charter. Yet in this case we have the government itself, through one of its agencies, trying to whittle away those

rights. The rights of labor should be protected, but not by destroying rights which are guaranteed to employer and employee alike.

MOTIVE IS NOT CONTROLLING FACTOR.

In division II of the Petitioner's brief the argument is made that even if the Respondents otherwise had the right to refuse the use of the hall for a union meeting, yet, if the refusal was motivated by a desire to impede unionization, this made their refusal illegal. We submit that such is not the law, and that the cases cited by the Petitioner do not sustain the position. Even if the Respondents' refusal to permit the use of the hall was motivated by a desire to impede unionization, this did not nullify the constitutional guaranty against the deprivation of their property without due process. Nor does the Act seek to prohibit evil intent. *F. W. Poe Mfg. Co. v. N. L. R. B.*, C. C. A. 4, 1941, 119 F. 2d 45; *N. L. R. B. v. Illinois Tool Works*, C. C. A. 7, 1946, 153 F. 2d 811; *Western Cartridge Co. v. N. L. R. B.*; C. C. A. 7, 1943, 134 F. 2d 240; *N. L. R. B. v. John & Ollier Eng. Co.*, C. C. A. 7, 1941, 123 F. 2d 589; *Indianapolis Power & Light Co. v. N. L. R. B.*, C. C. A. 7, 1941, 122 F. 2d 757.

In the instant case the lower court said: "It is equally clear that in the matter now before us the employer has not interfered with, restrained or coerced its employees in the exercise of their rights" (R. 140). And, further: "In the pending case, there was no evidence of any interference with or restriction upon the men in their communications on labor matters either with each other or with the agents of the union, in the homes of the men or on the streets of the town, or for that matter in the company's plant itself; and we think that the

Board had no authority to compel the companies to surrender their other property against their will for uses of which they did not approve, since the Board's power in this direction, is limited by a constitutional provision of great importance under our form of gavernment."

CONCLUSION

For the foregoing reasons it is respectfully submitted that the decision below should be affirmed.

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